Federal Subsistence Board

Fisheries Meeting Materials
January 13–15, 2009

Egan Civic and Convention Center
Anchorage, AK

FEDERAL SUBSISTENCE BOARD
PUBLIC MEETING AGENDA
January 13–15, 2009
8:30 AM – 5:00 PM Daily

Egan Civic and Convention Center, 555 West 5th Avenue
Anchorage, Alaska

1) Call to Order and Introductions

2) Corrections/Additions to the Agenda

3) Public Comment Period on Non-Agenda Items
(This opportunity is available at the beginning of each day)

4) Public Comment Period on Consensus Agenda Items
(This opportunity is available at the beginning of each day)

5) 2008–2009 Subparts C&D Proposals *(Fisheries Regulations)*

(a) Announcement of Consensus Agenda

(b) Board deliberation and action on Non-Consensus Proposals

(c) Adoption of Consensus Agenda

6) View DVD of Partners for Fisheries Monitoring Program

7) Board Discussion of Council Topics with Regional Advisory Council Chairs or their Designees

8) Discussion of deferred Yukon River Fisheries Regulatory Proposals

9) Other Business

10) Adjourn

Note: *The meeting will be held daily from 8:30 AM to 5:00 PM, or until the Board calls a recess for the day, or completes its work. Daily updates on Board progress through the agenda can be obtained by calling 1-800-478-1456, or in Anchorage at 786-3888.*

FEDERAL SUBSISTENCE BOARD

REGULATORY CONSENSUS AGENDA ITEMS

The following proposals have been included on the consensus agenda. These are proposals for which there is agreement among Federal Subsistence Regional Advisory Councils, the Federal Interagency Staff Committee, and the Alaska Department of Fish and Game concerning Board action. Anyone disputing the recommendation on a proposal may request that the Board remove the proposal from the consensus agenda and place it on the regular agenda. The Board retains final authority for removal of proposals from the consensus agenda. The Board will take final action on the consensus agenda after deliberation and decisions on all other proposals.

FEDERAL SUBSISTENCE BOARD

REGULATORY NON-CONSENSUS AGENDA PROPOSALS

Procedure for considering proposals:

1) Analysis presentation *(lead author)*
2) Summary of written public comments *(Regional Council Coordinator)*
3) Open floor to public testimony
4) Regional Council recommendation *(Chair or designee)*
5) Alaska Department of Fish and Game comments
6) Interagency Staff Committee comments *(ISC Chair)*
7) Board discussion with Council Chairs and State Liaison
8) Federal Subsistence Board deliberation and action

FP09-08 Executive Summary	
General Description	Proposal FP09-08 requests that the salmon dip net fishery be allowed to occur from shore as well as from boats within the Moose Range Meadows area of the Kenai River. *Submitted by Ninilchik Traditional Council*
Proposed Regulation	*§___.27(i)(10)(iv)(D)(i) At the Kenai River Moose Range Meadows site, dip netting is allowed ~~only~~ from **the bank or** a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to 2 baited single or treble hooks from June 15–August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).*
Southcentral Regional Council Recommendation	**Oppose**
Interagency Staff Committee Comments	See comments following the analysis.
ADF&G Comments	**Oppose**
Written Public Comments	**1 Oppose**

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-08

SOUTHCENTRAL REGIONAL ADVISORY COUNCIL

Oppose Proposal FP09-08. No Federal lands are available to allow fishing from shore without serious damage to the river bank.

Staff Analysis
FP09-08

ISSUES

Proposal FP09-08, submitted by Ninilchik Traditional Council, requests that the salmon dip net fishery be allowed to occur from shore as well as from boats within the Moose Range Meadows area of the Kenai River.

DISCUSSION

The proponent states that fishing from the bank would provide a more effective means of harvesting salmon than fishing from a boat, as provided under current regulations for the salmon dip net fishery at the Moose Range Meadows site of the Kenai River (**Map 1**). The proponent states that not all subsistence users have access to boats, so not all Federally qualified subsistence users are able to participate in the salmon dip net fishery at this site. Also, the river is difficult to navigate in much of this area since it is very rocky and fast flowing. Federally qualified rural residents can use an existing fishing platform within the site to harvest fish when using a rod and reel but not when using a dip net.

Existing Federal Regulation

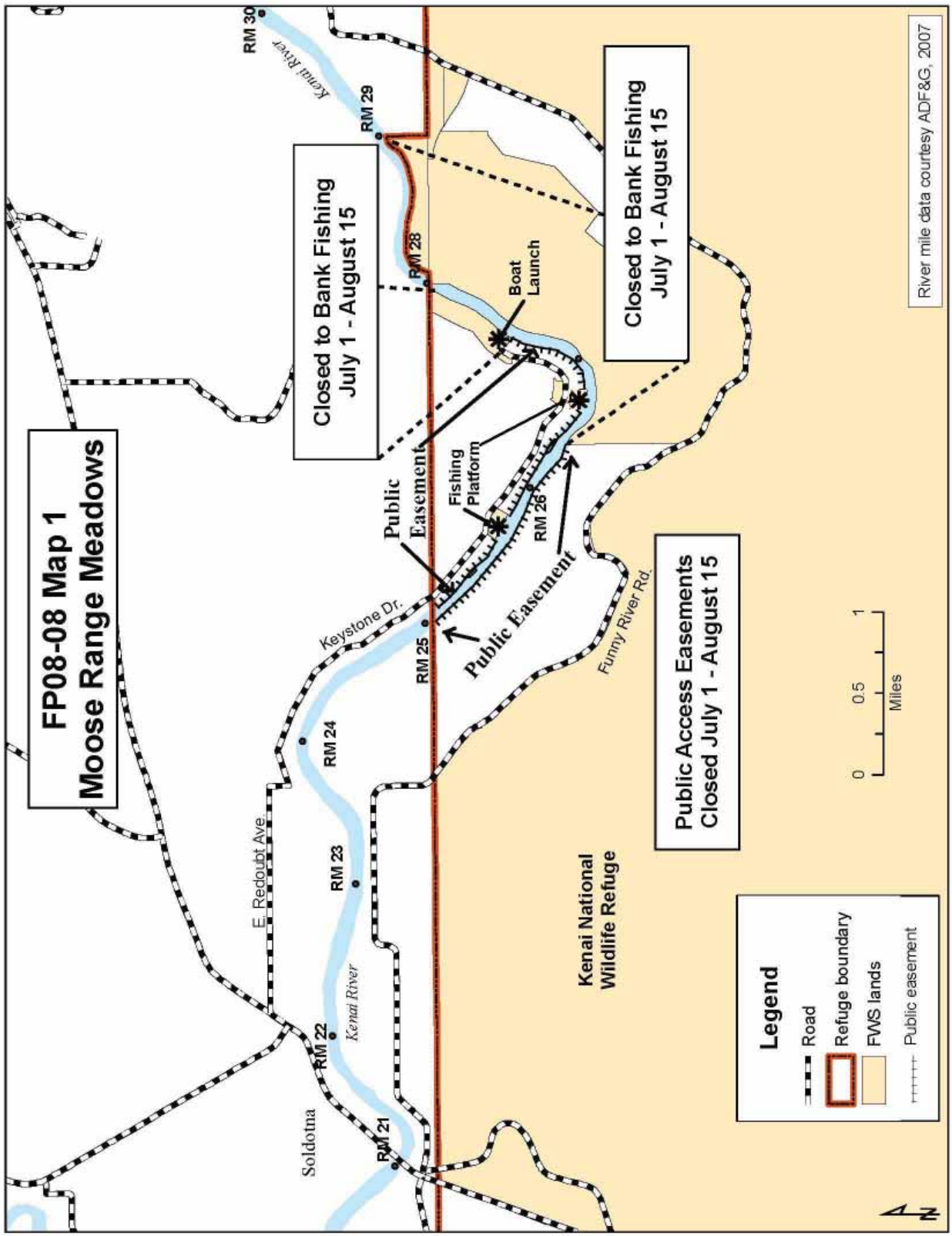
> *§___.27(i)(10)(iv)(D)(i) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to 2 baited single or treble hooks from June 15–August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).*

Additionally, for public access of Kenai National Wildlife Refuge lands and waters:

> *50 CFR 36.39(i)7(viii)(B) From July 1 to August 15 the public may not use or access any portion of the 25-foot wide public easements along both banks of the Kenai River within the Moose Range Meadows area; or along the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the streamside easements. You may obtain maps showing these closed areas from the Refuge Manager by referring to Sections 1, 2, and 3 of Township 4 North, Range 10 West, Seward Meridian.*

Proposed Federal Regulation

> *§___.27(i)(10)(iv)(D)(i) At the Kenai River Moose Range Meadows site, dip netting is allowed ~~only~~ from **the bank or** a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to 2 baited single or treble hooks from June 15–August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).*


FP08-08 Map 1
Moose Range Meadows
Closed to Bank Fishing
July 1 - August 15
Closed to Bank Fishing
July 1 - August 15
Public Access Easements
Closed July 1 - August 15
Public Easement
Public Easement
Boat Launch
Fishing Platform
Kenai National Wildlife Refuge
Keystone Dr.
Funny River Rd.
E. Redoubt Ave.
Soldotna
Kenai River
Kenai River
RM 30
RM 29
RM 28
RM 26
RM 25
RM 24
RM 23
RM 22
RM 21
0 0.5 1
Miles
Legend
Road
Refuge boundary
FWS lands
Public easement
River mile data courtesy ADF&G, 2007

Existing State Regulations

The following State regulations protect riparian habitat in the Moose Range Meadows areas by prohibiting or restricting sport fishing at certain times of the year:

5 AAC 57.180. Riparian Habitat Fishery Management Plan

> (d) From July 1 through August 15, the following Kenai River riparian habitats are closed to all fishing, except fishing from a boat that is located more than 10 feet from shore and not connected to the shore or any riparian habitat:
>
> > (15) on the south bank of the Kenai River, between ADF&G regulatory markers located at river mile 26.4 and river mile 30.0;
> >
> > (16) on the north bank of the Kenai River from an ADF&G regulatory marker located at the upstream edge of the boat ramp at the end of Keystone Drive at approximately river mile 27.3, upstream to ADF&G regulatory markers located at the Kenai National Wildlife Refuge boundary delineated by the power line at river mile 28.0;
>
> (e) For purposes of this section, riparian habitat means all areas within 10 feet in either direction from the Kenai River waterline.

Extent of Federal Public Waters

For purposes of this discussion, the phrase "Federal public waters" is defined as those waters described under 50 CFR 100.3. For the Moose Range Meadows portion of the Kenai River, Federal public waters under consideration for this proposal analysis include all waters within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge from about river mile 29 downstream to about river mile 26.5 (**Map 1).**

Customary and Traditional Use Determinations

In the Kenai Peninsula District for waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest, residents of Cooper Landing and Hope have a positive customary and traditional use determination for all fish and residents of Ninilchik have a positive customary and traditional use determination for salmon.

Regulatory History

Pre- and Early Statehood Fisheries

Until 1952 freshwater streams in the Kenai Peninsula were open to subsistence fishing, but poorly regulated commercial fisheries decimated salmon runs. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel fishing was allowed for "personal use" (Fall et al. 2004).

State Fisheries

A State regulatory management plan for Upper Cook Inlet salmon (5 AAC 21.363) provides Alaska Board of Fisheries guiding principles and provisions to use when adopting management plans for specific stocks.

The State classified most of the Cook Inlet Area, including the Kenai and Kasilof River drainages, as a nonsubsistence area in 1992 (5AAC 99.015(3)). The only State subsistence fisheries in Cook Inlet occur in areas that are not accessible from the road system, including the Tyonek, Windy Bay, Port Chatham, Kyuktolik, and Port Graham subdistricts, as well as portions of Seldovia Bay and the Yentna River drainage. Under State regulations, only State sport fisheries are allowed in the Moose Range Meadows area. From July 1 through August 15, as per the Riparian Habitat Fishery Management Plan for the Kenai River drainage (5 AAC 57.180 (d)(16)), people sport fishing for salmon in this area must do so either from a boat that is located more than 10 feet from shore and not connected to the shore or any riparian habitat, or the north bank fishing platforms.

Federal Subsistence Fisheries

Federal regulations for subsistence fisheries were first established in 1999. For salmon, trout, Dolly Varden, and char in Cook Inlet there was no customary and traditional use determination; therefore, all rural residents of Alaska qualified under the Federal program as eligible subsistence users. In 2002, regulations for take in Cook Inlet were established for salmon, trout, Dolly Varden, and char. This subsistence fishery required a permit, and seasons, harvest and possession limits, and methods and means for take were identical to State of Alaska sport fishing regulations. The Federal Subsistence Board (Board) established this fishery as an interim measure to provide some subsistence opportunity in Cook Inlet for local rural residents, pending collection of additional information on community and area-specific harvest patterns to refine customary and traditional use determinations as well as regulations for take. The Board concluded that this information was necessary because of the unique circumstances of the Kenai Peninsula, where rural communities are interspersed among much larger non-rural communities, and there have been no subsistence fisheries in the freshwaters of the Kenai Peninsula for over 50 years.

The Board did not consider any further regulatory proposals for Cook Inlet until 2005. With new information available (Fall et al. 2004), the Board took up consideration of customary and traditional use determinations, and continued to defer proposals for take until completion of those deliberations. During this time, no proposals for harvest were under consideration, and regulations for subsistence harvest were identical to State of Alaska sport fishing regulations with one exception. In November 2006, the Board adopted FSA06-01b which provided a temporary 2006-2007 winter subsistence fishery for resident species in Tustumena Lake. The Board considered fishery regulatory proposals for Cook Inlet in both 2007 and 2008, and adopted several proposals establishing subsistence fisheries for salmon and resident fish species in the Kenai and Kasilof River drainages. These include dip net salmon fisheries at designated sites in the Kenai, Russian, and Kasilof Rivers; rod and reel salmon and resident species fisheries in the Kenai and Kasilof River drainages; an under-the-ice gillnet and jig resident species fishery in Tustumena Lake, and a temporary fish wheel salmon fishery in the Kasilof River. The Board considered, but did not adopt, a 2008 proposal that would have allowed dip net fishing from the shore in the Moose Range Meadows site of the Kenai River (FWS 2007a and FSB 2007). The Board's motion to adopt the proposal failed with a tied vote (3 for and 3 against). While all Board members agreed that riparian habitat protection was an important concern for this area, they could not agree on whether allowing Federally qualified subsistence users to fish from the bank would result in habitat damage.

Biological Background and Harvest History

Salmon populations in the Kenai River are healthy, and harvests, while large, have been within sustainable limits. The proponent is not requesting changes to household or annual total harvest limits for the Kenai River subsistence salmon dip net fishery. An extensive portion of the staff analyses for the dip net fishery regulations adopted by the Board in May 2007 was devoted to the biological status and harvest

history of salmon species in the Kenai River (FWS 2007b). Little additional new biological information is available since that time. However, Federal subsistence harvest information for 2007, the first full season under the new fisheries regulations, is available along with preliminary information for 2008.

For the Kenai River in 2007, a total of 110 salmon permits were issued and 103 were returned (Sonnevil 2007 pers. comm.). Forty-three permit holders reported a total harvest of 692 sockeye salmon from the Kenai River. Of these, 610 were harvested from the Russian River Falls salmon dip net fishery site (450 by dip net, 160 by rod and reel), 66 from the upper Kenai River (all by rod and reel), and 16 from the Moose Range Meadows salmon dip net fishery site (12 by dip net, 4 by rod and reel). One permit holder reported no success during one day of fishing. Thirty-five of the successful permit holders were Cooper Landing residents, four were Ninilchik residents, and four were Hope residents. Additionally, two Cooper Landing residents reported a harvest of five coho salmon from the Kenai River, and one rainbow trout was reported harvested from the Russian River Falls site.

For the Kenai River in 2008, a total of 190 permits were issued to 141 individuals (Palmer 2008 pers. comm.). One hundred fifty-nine permits were issued for the Kenai River (134 for salmon and 25 for resident species), while the remaining 31 permits were issued for the Kasilof River (26 for salmon and 5 for resident species). One hundred-four permits were issued to Cooper Landing residents, 25 to Hope residents, and 61 to Ninilchik residents. The reported harvest of sockeye salmon is 1,349 from the Kenai River and 108 from the Kasilof River. About 82% of these were harvested in the dip net fisheries at Russian River Falls (1,090) and the upper Kasilof River (108), while the remaining 18% were harvested in the salmon rod and reel fisheries at Moose Range Meadows (172) and the upper Kenai/Russian River (87). Additionally, two Chinook salmon were harvested in the dip net fishery in the upper Kasilof River, and five coho salmon were harvested in the rod and reel fishery at Moose Range Meadows. Rod and reel harvest levels are likely conservative because there is no requirement for in-season reporting except when rod and reel gear is used to harvest household limits in the salmon dip net fisheries.

Other Alternatives Considered

During the 2008 regulatory cycle, Ninilchik Traditional Council submitted a similar proposal (FP08-08) requesting use of dip nets from shore at the Moose Range Meadows fishing site. While the Council did not recommend and the Board did not adopt this proposal, three alternatives to the proposal were also discussed: 1) allowing dip net use from the fishing platform at the site when it was rebuilt, 2) building another platform to accommodate subsistence users, and 3) allowing dip net use from shore prior to and after the bank closure period that extends from July 1 through August 15.

Allowing use of dip nets on the existing fishing platform would prevent bank trampling, but would also place two different gear-type groups in direct competition with each other and would likely cause social conflicts. The platform at the dip netting site, as well as another one outside the site, were originally built and designed to help replace lost sport fishing opportunities for sockeye salmon resulting from the 1989 Exxon Valdez Oil Spill, and up to 30,000 people use these fishing platforms each year (West 2007, pers. comm.). Under existing Federal subsistence regulations, platforms can be used by Federally qualified subsistence fishers using rod and reel gear, but not by those using dip nets. Aside from constant monitoring by an enforcement officer, limiting or avoiding social conflicts could be accomplished by separating people using dip nets from those using rod and reel gear on the platform through time or area restrictions. Another option discussed was to allow dip net users to use the platform only as an access point to the river bed, but not allow them to fish from the platform. However, dip netting while standing in the river at this site would not be feasible since the water is usually too deep and the area is very rocky.

Building another platform to accommodate dip net and other subsistence users would prevent bank trampling and avoid social conflicts with other users. However, Federal public lands within the Moose Range Meadows fishing site have conservation covenants that preclude such development. Therefore, it would be necessary to find and purchase, or obtain a long-term use agreement for, a private land parcel on which a platform could be built. This would require considerable funding, which is not currently available.

Allowing dip net use from shore prior to and after the bank closure period that extends from July 1 through August 15 might provide some additional fishing opportunity. However, since dip netting is most effective for harvesting sockeye rather than Chinook or coho salmon, allowing dip netting from the bank before and after the sockeye salmon run would not provide much actual fishing opportunity. Also, access to the river bank on Federal public lands in the Moose Range Meadows fishing site is difficult since there are no trails, and fishing activities after the bank closure period can still damage riparian habitat in an area that is critical to rearing juvenile Chinook salmon. Although rod and reel fishing is allowed from the river bank prior to and after the bank closure, most people still use the fishing platforms during these time periods due to access issues. While trails, fishing platforms, and boardwalks would allow access and prevent bank trampling, they cannot be built on Federal public lands in this area due to conservation easements.

Effects of the Proposal

While all the land in this area of the Kenai River was set aside for the Kenai National Moose Range in 1941, much of it was conveyed to Salamatof Native Corporation in the 1980s under the Alaska Native Claims Settlement Act (ANCSA). As part of the negotiated settlement agreement, Salamatof received a smaller amount of fee title acreage that they were allowed to subdivide and develop in exchange for public access easements, which are not Federal public land. The Federal government retained ownership of the river bed and islands in this area. The easements allow access to the river bed for fishing but not use of the shoreline, which remains private property. There are now many homes and business establishments in this area, and public easements allowed development of an extensive sockeye salmon sport fishery in this area. This caused social conflicts between fishers and private property owners, as well as extensive bank trampling.

In 1995, flooding resulted in the loss of large sections of river bank in this area, and the Refuge Manager instituted emergency closures to avoid further damage by preventing access. These emergency, seasonal access closures were placed into regulation after completion of an Environmental Assessment. They complement seasonal bank closures to sport fishing made by the State in this area. Federal and State closures extend from July 1 through August 15, the peak period for sockeye salmon sport fishing. The purpose of these closures is to protect sensitive riparian areas that provide important rearing habitat for juvenile salmonids, particularly Chinook salmon. Once the vegetative cover is destroyed, bank areas are more prone to erosion and sloughing due to flooding, as occurred in 1995, as well as to ice floes and boat wakes.

The Refuge reacquired some parcels from Salamatof Corporation using *Exxon Valdez* Oil Spill funds (Weiner 2000). These funds were to be used to "restore and protect fish habitat on the Kenai River," and "improve existing recreation access to the Kenai River watershed in a manner that restores and protects riparian fish and wildlife habitat." Two platforms were built on north bank parcels to accommodate sport fishing, while still protecting riparian vegetation. One of these platforms lies within the Moose Range Meadows fishing site. Conservation covenants were placed on other parcels to preclude development, including construction of trails, walkways, and fishing platforms. Most rod and reel fishing occurs from

boats and fishing platforms even before and after the bank closure dates. This is partly due to limited access options, but also to the fact that fishing effort prior to July 1 is primarily for Chinook salmon while effort after August 15 is primarily for coho salmon. Unlike sockeye salmon, Chinook and coho salmon do not migrate close to shore in large numbers, and fishers in boats are much more effective in harvesting Chinook salmon than those on shore.

Allowing dip netting from shore at the Moose Range Meadows fishing site could provide some increased fishing opportunity for Federally qualified subsistence users since not all users have boats and the river is difficult to navigate at this site. However, there are probably few shore locations at this fishing site where water depth, current flow, and river bed substrate are suitable for dip netting. While potential subsistence use would probably be much less than past sport fishing use that resulted in damage and loss of riparian habitat in 1995, even low levels of use could be detrimental to riparian habitat over time. Federal public lands on the north shore are more easily accessed without a boat than Federal public lands on the south shore. However, except for a north bank fishing platform, there are no trails, walkways, or other platforms to access the river bank from Federal public lands within this site. Under existing Federal subsistence regulations, the fishing platform can be used by Federally qualified subsistence users only if they fish with rod and reel gear. Allowing use of the fishing platform by dip net users would likely result in user group competition and conflict.

OSM CONCLUSION

Oppose Proposal FP09-08.

Justification

Restricting dip netting at the Moose Range Meadows site to boats makes it difficult or impossible for some subsistence users to fish at this site with dip nets. However, much of the riparian zone in the Moose Range Meadows site provides rearing habitat for juvenile salmonids, and can be degraded through continued use. To avoid damaging this habitat during the period of greatest sockeye salmon sport fishing activity, July 1 through August 15, the Kenai National Wildlife Refuge closes public easements through private lands, which prohibit public access to the shoreline and river bed, and recognizes ADF&G sport fishing closures of river banks on Federal public lands. During this time period, all sport fishing occurs either from boats, north bank fishing platforms, or private lands. While the number of Federally qualified subsistence users that might choose to dip net from shore at this site would be much less than the number of sport fishers that used and damaged the banks at this site prior to bank closures, even moderate bank trampling, over time, could result in riparian habitat damage and decreased survival of salmonids, particularly Chinook salmon.

Under existing regulations, Federally qualified subsistence users can dip net from a boat at the Moose Range Meadows site, while standing in the river or from a boat at the Kenai River Mile 48 site, and from the bank or while standing in the river at the Russian River Falls site. They can use rod and reel gear in addition to dip nets at all three Kenai River dip net sites to fill their annual household salmon limits. Federally qualified subsistence users can also participate in the salmon rod and reel fishery, which occurs throughout a much large proportion of Kenai River drainage Federal public waters and has greater daily and annual harvest limits than those allowed for the State sport fishery. Salmon harvested in the salmon rod and reel fishery are not included as part of household limits for the dip net/rod and reel salmon fishery. Also, Federally qualified users can use existing fishing platforms to access Federal public waters when using rod and reel gear. Taken as a whole, existing Federal subsistence Kenai River drainage salmon fisheries provide a meaningful preference for Federally qualified subsistence users, while also conserving healthy fish populations and critical riparian fish habitat.

LITERATURE CITED

Fall, J.A., RT. Stanek, B. Davis, L. Williams, and R. Walker. 2004. Cook Inlet customary and traditional subsistence fisheries assessment. USFWS, Office of Subsistence Management, Fisheries Resource Monitoring Program, Final Report (Study No. 03-045). ADF&G, Division of Subsistence, Technical Paper No. 285. Juneau, Alaska. 245 pages.

FWS. 2007a. Staff Analysis FP08-08. Pages 277-284 *in* Federal Subsistence Board Meeting Materials December 11-13. Office of Subsistence Management, USFWS, Anchorage, Alaska. 399 pages.

FWS. 2007b. Staff Analysis FP07-27B & C and 29 Kenai River Salmon. Pages 107-137 *in* Federal Subsistence Board Meeting Materials May 8-10. Office of Subsistence Management, USFWS, Anchorage, Alaska. 289 pages.

FSB. 2007. Transcripts of Federal Subsistence Board proceedings, December 11-13, 2007. Volume 2, Pages 257-279. Office of Subsistence Management, USFWS, Anchorage, AK.

Palmer, Douglas. 2008. Fisheries Biologist. Personal communication-email. USFWS, Soldotna, AK.

Sonnevil, Gary. 2007. Fisheries Biologist. Personal communication-email. USFWS, Soldotna, AK.

Weiner, A. 2000. Kenai River habitat restoration and recreation enhancement project. *Exxon Valdez* Oil Spill, Restoration Project 99180. Final Report. Alaska Department of Natural Resources, Anchorage, Alaska. 54 pages.

INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-08

The Interagency Staff Committee (ISC) found the staff analysis for Proposal FP 09-08 to be a thorough and accurate evaluation of the proposal and provides sufficient basis for the Regional Council recommendation and Federal Subsistence Board action on the proposal.

The ISC noted that the Federal Subsistence Board may want to consider another field trip to the Kenai Peninsula in 2009 to see how land ownership patterns and Federal land access issues affect subsistence fishing opportunities in the Moose Range Meadows area.

Alaska Department of Fish and Game
Comments to Federal Subsistence Board

FP09-08 Allow Shore-Based Dip Nets and Rod and Reel at Moose Range Meadows

Introduction: FP09-08 proposes to allow federally-qualified subsistence users from Hope, Cooper Landing, and Ninilchik/Happy Valley to fish from the bank in addition to fishing from a boat in the waters that flow through Moose Range Meadows area while fishing with dip nets and rod and reel. This proposal is identical in its intent with proposal FP08-08 submitted by the same proponents and rejected at the December 2007 Federal Subsistence Board (Federal Board) meeting. Current federal regulations only authorize fishing from boats in this area for reasons discussed at the May 2007 and December 2007 Federal Board meetings. Those reasons include:

1. The entire shore of federal land identified as the Moose Range Meadows area is closed to all fishing within 10 feet of the waterline from July 1– August 15.[1]
2. Lands in which there is a federal interest, including trails, banks, and catwalks, have legal easements that preclude these shore-based activities in order to protect riparian habitat; participants could be cited under both state and federal[2] law.
3. Private lands in the area are not subject to federal subsistence fishery jurisdiction.
4. Adoption of a proposal allowing shore-based federal subsistence fishing would create conservation, enforcement, and confusion issues among all users.

Opportunity Provided by State: The Kenai River is located in the Anchorage-MatSu-Kenai Nonsubsistence area designation under State law. The State provides a broad array of personal use, recreational, and educational fisheries to meet needs for personal and family consumption as well as cultural purposes. The personal use and educational fisheries provide opportunity to harvest salmon more efficiently and closer to home, and these existing opportunities are frequently not used or are used at very low levels. Due to accessibility and high use of the Kenai harvest of rainbow/steelhead trout, lake trout, and Arctic char/Dolly Varden, regulations must be conservative. However, significant opportunity has been preserved on the Kenai, and more liberal regulations apply in many nearby waters providing adequate opportunities for harvest of rainbow/steelhead trout, lake trout, and Arctic char/Dolly Varden under State sport fishing regulations.

Conservation Issues: Adoption of this proposal would result in impacts on fish and their habitat. Allowing fishing from shore will significantly impact the riparian habitat closure areas. From July 1 – August 15, the shoreline -- which is defined to extend 10 feet into the water and include uplands measured from the river waterline -- is closed to any fishing activity in order to protect riparian habitat. These dates were selected to protect the shore from human impact during the majority of the sockeye salmon return to the Kenai River and during the late Chinook

[1] The entire section of south shoreline from river miles 26.4-30.0 (entire federal dip net fishery area) is seasonally closed from July 1 – August 15. The section of the north shore line from River Mile 27.3- 28 is also seasonally closed from July 1 - August 15. Federal closures apply to "*the 25-foot wide public easements along both banks of the Kenai River within Moose Range Meadows area; or along the Homer Electric right-of-way from Funny River Road and Keystone Drive to the downstream limits of the streamside easements.*"
[2] These easement closures are reflected in federal regulations at 50 CFR 36.39(i)(7)(viii)(B).

salmon run. This time period may be the most important part of the vegetation growing season. Fishing-related activities, which include walking, running, stomping, standing, and storage of equipment that a person carries and uses to fish, have significant impact on vegetation. The riparian habitat zone is important to the productivity and health of the anadromous river ecosystem. Regulations were developed to protect this fragile zone from trampling and long-term damage due to concentrated and repetitive impacts to the vegetation and soils.

An assessment of fish habitat in the Kenai River was conducted by the Alaska Department of Fish and Game (Department) in 1994 (Liepitz; 1994[3]). This study identified and evaluated a variety of Kenai River habitat types and conditions. The study concluded that the riparian habitat zone from river miles 17.5 – 39.5, which includes the Moose Range Meadows area, contains the greatest amount (42.3% of total mainstem) of overhanging vegetation and under-cut banks of the Kenai River. The study further concluded the river substrate between river miles 17.5-39.5 contains the greatest amount of gravel and cobble material within the entire mainstem, which supports the greatest opportunity for spawning and provides important cover habitat in the crevices between the cobbles for juveniles to rest, feed, and rear. Testimony given by the Office of Subsistence Management and Fish and Wildlife Service at the October 2007 meeting of the Southcentral Regional Advisory Council indicated the riparian habitat within the Moose Range Meadows area is significant and is of the highest quality for the rearing of juvenile Chinook and coho salmon in the Kenai River watershed.

Discussions at the October 2008 Southcentral Regional Advisory Council meeting indicated that, if this proposal were adopted, participation in the Moose Range Meadows federal subsistence dip net fishery could heavily impact the riparian habitat. Discussions focused on the potential for large numbers of users who would prefer the easily accessible dip net and rod and reel fishery at this proposed in-town location behind the largest chain department store on the Kenai Peninsula over the less accessible Russian River Falls federal subsistence dip net and rod and reel fishery. Currently, participation in the federal subsistence dip net and rod and reel fishery at the Russian River Falls is growing rapidly, and harvest would likely be much larger if the fishery were more easily accessible. If FP09-08 is approved, the magnitude of the Moose Range Meadows federal subsistence fishery would quickly increase and would be accompanied with commensurate riparian habitat damage.

Jurisdiction Issues: All of the shoreline on both sides of the Kenai River in the area of the federal dip net and rod and reel fishery is either closed to fishing within 10 feet of shore from July 1 – August 15 (including standing in the water) or is not federal land. The areas in which there is federal interest that are not closed to fishing within 10 feet of shore[4] consist of public easements which do not allow any fishing activities. No fishing is allowed from a 17(b) easement on private land granted for public access. Fishing under federal regulations cannot occur while the user is standing on State or private land. Federal subsistence users can access the river through Kenai Borough Property Parcel # 13526401 upriver of the boat launch but cannot legally fish while standing on the easement and cannot store tackle or equipment used to fish on

[3] Liepitz, Gary S. An assessment of the cumulative impacts of development and human uses on fish habitat in the Kenai River, Technical report no. 94-6, Alaska Dept. of Fish and Game, Habitat and Restoration Division, Anchorage, Alaska.
[4] Kenai Peninsula Borough Property Parcels # 13526221, 13526024, and 13526025.

the easement. The Kenai River shoreline from River Mile 28-29 is private property and is downstream of refuge lands, so no claim to federal reserved water rights exists in this stretch (and no such claim can be made unless the Secretaries take the extraordinary step of seeking to impose extraterritorial jurisdiction, which would be highly difficult to justify).

Other Comments: The mixing of gear types and user groups that would result from adoption of this proposal would likely cause elevated social conflicts, enforcement issues, and displacement of current users. There are only two small sections of shoreline in the Moose Range Meadows area, as identified in the Federal Subsistence Board meeting material book (page 278) in the FP08-08 Federal Staff Analysis, which could be used to conduct a Federal subsistence fishery from shore. These two spots are already currently used by thousands of anglers annually.

Recommendation: Oppose.

WRITTEN PUBLIC COMMENTS

Oppose. This proposal would allow subsistence users to dip net from the bank of the Kenai River at the Moose Range Meadows site. At the time the Federal Board creates this fishery they specifically did not allow dip netting from the shore because the shore line is currently closed to all fishing (July 1 – August 15 bank closure is when it is the high water flows on the Kenai River, where the mean high water line is along and amidst the riparian bank). Both state and federal managers have concluded that habitat within the riparian zone of the Moose Range Meadows area contains some of the most important rearing habitat for juvenile and adult salmon within the Kenai River watershed. Trampling the currently protected riparian zones within this area will negatively affect salmon productivity that will lead to serious conservation issues. Passage of this proposal will negate the proactive regulatory efforts of state and federal managers intended to protect critical shoreline habitat from damage.

To a large degree this decision was made when the Board acted in 2007 and this appears to be an extension of opportunity already granted.

We oppose allowing dip net fishing from the bank in this critical riparian habitat area. Regardless of the user's qualifications regarding federal subsistence, we do not believe critical riparian habitat should be degraded. It should be noted that these lands were originally selected by a local native village corporation and removed from the boundaries of the Kenai National Wildlife Refuge. EVOS monies were used at a later date by the Federal government to repurchase a portion of this land selection back from the native village corporation, and place an additional conservation easement on riparian habitat in the remaining private properties. The conservation measures negotiated by the Federal government and the native village corporation that are now in place at the Moose Range Meadows area are due in large part to the recognition of all on their importance as critical and sensitive riparian habitat for juvenile and adult salmon.

The Federal Subsistence Board was correct in its past actions that placed conservation of this critical riparian habitat area utmost in its decision making process when it enacted the existing subsistence priority opportunities in the Moose Range Meadows area in effect today.

Kenai River Sportfishning Association

FP09-02 Executive Summary	
General Description	Proposal FP09-02 would prevent Federal subsistence users from accumulating (combining) Federal subsistence harvest limits with State sport fishing harvest limits in the Southeastern Alaska Area. Action on this proposal will address the accumulation of harvest limits component of proposal FP09-03. *Submitted by the Alaska Department of Fish and Game*
Proposed Regulation	*§___.27(i)(13) Southeastern Alaska Area.* *(vii) You may **not** accumulate ~~annual~~ Federal subsistence harvest limits authorized for the Southeastern Alaska Area with **daily or annual** harvest limits authorized under State of Alaska sport fishing regulations.*
Southeast Regional Council Recommendation	**Oppose**
Interagency Staff Committee Comments	See comments following the analysis.
ADF&G Comments	**Support with modification**
Written Public Comments	**None**

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-02

SOUTHEAST REGIONAL ADVISORY COUNCIL

Oppose Proposal FP09-02**.** The Council determined that this proposal would be an unnecessary restriction on subsistence uses. It is the opinion of the Council that the focus of this proposal is to restrict harvest opportunities for only rural residents. No evidence was presented to show that the restrictions contained within this proposal are necessary for conservation. Current State and Federal steelhead regulations provide for the continuation of subsistence use and conservation of steelhead. The Council does not think it necessary or appropriate to link regulations for Federal subsistence steelhead fisheries with harvest limits specified in State regulations. The Council agrees that subsistence fishermen should not be prevented from participating in sport fishing.

STAFF ANALYSIS
FP09-02

ISSUES

Proposal FP09-02, submitted by the Alaska Department of Fish and Game (ADF&G), would prevent Federal subsistence users from accumulating (combining) Federal subsistence harvest limits with State sport fishing harvest limits in the Southeastern Alaska Area. Action on this proposal will address the accumulation of harvest limits component of proposal FP09-03.

DISCUSSION

The proponent believes that the current Federal regulations are not clear and can be misinterpreted to allow combining the harvest limits other than annual limits for Federal subsistence fisheries with harvest limits for State sport fisheries. The result is unnecessary exposure of subsistence or sport fish users to enforcement actions and an increased potential for developing conservation concerns. The proposal justification references the steelhead fishery, which is of primary interest to the proponent. The proposed regulation change would include in the Southeastern Alaska Area regulation a prohibition of the accumulation of Federal subsistence harvest limits with any daily or annual sport fishing harvest limits.

The only freshwater State sport fishery with an annual harvest limit in Southeast Alaska is the steelhead fishery.

The only Federal subsistence fisheries with annual limits in the Southeastern Alaska Area are: the subsistence salmon fishery on the mainstem of the Stikine River, the Southeast Area general steelhead fishery (except Prince of Wales) and seventeen locations specified on permits for the subsistence sockeye salmon fisheries. There are two subsistence steelhead fisheries (Winter POW, Spring POW) with seasonal harvest limits. The Statewide Federal regulation does not allow the accumulation of Federal subsistence harvest limits with State of Alaska harvest limits. In the Southeast Alaska Area, that regulation is further modified by specifying: (1) once a subsistence annual limit is taken, a person may subsequently participate in a State authorized sport fishery and (2) a person cannot possess subsistence-taken and sport-taken salmon at the same time.[1]

The general steelhead fishery in the Southeastern Area is regulated through annual harvest limits by the Federal program. There are also State sport-fishing daily and annual harvest limits for steelhead. The proponent states that linking a Federal subsistence fishery for steelhead with a steelhead sport fishery, by allowing the accumulation of harvest limits is confusing, difficult to manage, may lead to conservation issues, and should not be allowed.

Existing Federal Regulation

> *§___.27(i)(13). Southeastern Alaska Area*
> *(vii) You may accumulate annual Federal subsistence harvest limits authorized for the Southeastern Alaska Area with harvest limits authorized under State of Alaska sport fishing regulations.*

[1] In the Prince William Sound Area subsistence harvest limits may be accumulated with sport harvest limits as long as they are not taken on the same day, except in the Copper River above Haley Creek where only salmon harvest limits may be accumulated with sport harvest limits.

Proposed Federal Regulation

§___.27(i)(13) Southeastern Alaska Area.
*(vii) You may **not** accumulate ~~annual~~ Federal subsistence harvest limits authorized for the Southeastern Alaska Area with **daily or annual** harvest limits authorized under State of Alaska sport fishing regulations.*

Other Relevant Federal Regulations

§__.25(c)(1) Harvest limits authorized by this section and harvest limits established in State regulations may not be accumulated.

§__.25(c)((3) A harvest limit applies to the number of fish, wildlife, or shellfish that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

§___.27(a)(2)Applicability. You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative, except as modified by regulations in §___.27(i). This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.

§___.27(e)(3)Fishing permits and reports. If a subsistence fishing permit is required by this section the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

§___.27(i)(11) Prince William Sound Area.

(i)(A) In the Prince William Sound Area within Chugach National Forest and in the Copper River drainage downstream of Haley Creek you may accumulate Federal subsistence fishing harvest limits with harvest limits under State of Alaska sport fishing regulations provided that accumulation of fishing harvest limits does not occur during the same day.

(i)(B) You may accumulate harvest limits of salmon authorized for the Copper River drainage upstream from Haley Creek with harvest limits for salmon authorized under State of Alaska sport fishing regulations.

§___.27(i)(13). Southeastern Alaska Area

(xi) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xviii) Unless otherwise specified in this § 100.27(i)(13), you may take steelhead under the terms of a subsistence fishing permit. The open season is January 1 through May 31. The daily household harvest and possession limit is one with an annual household limit of two. You may only use a dip net, gaff, handline, spear, or rod and reel. The permit conditions and systems

to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xix) You may take steelhead trout on Prince of Wales and Kosciusko Islands under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

(A) The winter season is December 1 through the last day of February, with a harvest limit of two fish per household. You may use only a dip net, handline, spear, or rod and reel. The winter season may be closed when the harvest level cap of 100 steelhead for Prince of Wales/Kosciusko Islands has been reached. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of five fish per household. You may use only a dip net, handline, spear, or rod and reel. The spring season may be closed prior to May 31 if the harvest quota of 600 fish minus the number of steelhead harvested in the winter subsistence steelhead fishery is reached. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xx) In addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, brook trout, grayling, cutthroat, and rainbow trout apply:

(A) the daily household harvest and possession limit is 20 Dolly Varden; there is no closed season or size limit;
(B) The daily household harvest and possession limit is 20 brook trout; there is no closed season or size limit;
(C) The daily household harvest and possession limit is 20 grayling; there is no closed season or size limit;
(D) The daily household harvest limit is 6 and the household possession limit is 12 cutthroat trout in combination; there is no closed season or size limit;

Existing State Regulation

There are two relevant State regulations:

5 AAC 01.745(b) No person may possess subsistence-taken and sport-taken salmon on the same day.

5 AAC 77.682(e) No person may possess personal use-taken and sport-taken salmon on the same day.

5 AAC 47.022 General provisions for seasons and bag, possession, annual, and size limits for the fresh waters of the Southeast Alaska Area.

(b) In the fresh waters east of the longitude of Cape Fairweather:

(4) steelhead may be taken from January 1–December 31; Bag limit of 1 fish; Possession limit of two fish; must be 36 inches or greater in length; Annual limit of two fish; A harvest record is required as specified in 5AAC 47.024(C)

For Southeast Alaska, there is a prohibition against possessing salmon in the sport fishery on the same day as possessing salmon harvested in either the personal use or subsistence fisheries. In Southeast Alaska, there is no directed personal use or subsistence fishery for steelhead, Dolly Varden, brook trout, grayling, cutthroat or rainbow trout; however, all fish taken incidentally under the terms of a personal use or subsistence permit for salmon may be legally retained.

Other Related Proposals

Proposal FP09-03 requests a prohibition in the Southeastern Alaska Area on accumulation of annual limits of steelhead under Federal and State regulations for the Southeastern Alaska Area. Action on this proposal will address the accumulation of harvest limits portion of Proposal FP09-03.

Extent of Federal Public Waters

All fresh waters within the exterior boundaries of the Tongass National Forest are considered Federal public waters for the purposes of Federal Subsistence Fisheries management. For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 50 CFR 100.3.

Customary and Traditional Use Determinations

All Customary and Traditional Use Determinations for Southeastern Alaska apply and are listed in Appendix A of the analysis for proposal FP09-03.

Regulatory History

Regulations allowing for a Federal steelhead fishery were effective beginning 2003 for the subsistence fishery on Prince of Wales Island. Kosciusko Island was added in 2004. The seasonal harvest limits are two steelhead taken between December 1 and February 28/29 and five steelhead taken between March 1 and May 31. In 2004, the Board rejected Proposal FP04-34, which would require fin clipping of subsistence taken trout and char and prohibit the accumulation of Federal subsistence and State sport fishing limits for trout and char. No discussion occurred by the Board over this proposal as it had been placed as a consent agenda item following the Council meeting (FSB 2003). The Board adopted a subsistence steelhead fishery for the remainder of the Southeastern Alaska Area in 2005. The annual steelhead harvest limit was two fish. The Board also adopted Proposal FP05-21, which allowed Federally qualified users to harvest fish under sport fishing regulations after taking the annual subsistence harvest limit for that species under Federal subsistence fisheries regulations. The intent of the final regulatory language was to prohibit the accumulation of harvest limits in the Federal subsistence fishery with harvest limits in State personal use and State subsistence fisheries while allowing a subsistence fisherman to continue to participate in the State sport fisheries for steelhead and sockeye salmon (FSB 2005).

Biological Background

Prior to 1994, under sport fishing regulations, the State allowed the use of bait and specified a daily harvest limit with no size restrictions. Population declines of steelhead were evident. In 1994, the Alaska Board of Fisheries enacted conservative regulations for the sport and commercial fisheries for steelhead in Southeast Alaska. Steelhead populations have increased after the State implemented these more restrictive

measures. Brook trout and grayling have been introduced and are available in a few locations. Currently, salmon, trout, Dolly Varden, grayling, and steelhead stocks are generally healthy in the Southeastern Alaska Area.

Harvest History

Fish are and have historically been an important resource to the Area's sport, commercial, personal use and subsistence fisheries. Large numbers of salmon and trout are harvested each year on a sustainable basis **(Table 1)**.

Table 1. Average Harvest, Southeast Alaska 2002–2007

	Chinook	Chum	Coho	Trout	Dolly Varden	Pink	Sockeye	Steelhead
Federal Subsistence	24	16	210	26	26	115	379	32
State PU-Subsistence	174	1,136	616	0	0	1,561	36,004	0
Sport Fishery	82,731	16,411	309,913	4,826	15,513	79,648	20,347	151
Commercial	424,167	9,963,167	2,663,833	0	0	43,149,667	1,536,000	167

Note: Sport Fishery does not include 2007 data.

Data source is State of Alaska on-line data for sport and commercial harvest reports, Alex database for state personal use and subsistence harvest and Federal subsistence database for Federal subsistence harvests.

www.sf.adfg.state.ak.us/statewide/ParticipationAndHarvest/main.cfm

http://www.cf.adfg.state.ak.us/geninfo/finfish/salmon/catchval/blusheet/07exvesl.php

Effects of the Proposal

Prohibiting the sport-harvest of fish once the subsistence annual harvest is taken would prevent Federal subsistence users from subsequently harvesting steelhead in the Southeast Alaska Area (excluding Prince of Wales Island) steelhead fishery and sockeye salmon in 17 specific streams throughout the Southeastern Alaska Area. These are the only fisheries where there is an annual limit in Federal subsistence fishing regulations and an opportunity for continued sport fishing. The two steelhead fisheries on Prince of Wales Island (Winter Prince of Wales, Spring Prince of Wales) have seasonal harvest limits, not annual harvest limits. Although there are annual limits in the Stikine River, Federal regulations restrict subsistence fishing to the mainstem of the river and close the clear-water tributaries, where sport fishing may occur.

One of the current Federal regulations for the Southeastern Area (§___.27(i)(13)(xi)) prevents the possession of salmon taken in the subsistence fishery and the sport fishery on the same day. This regulation was carried forward from existing State regulations. Since the State does not have subsistence fisheries for species other than salmon in Southeast, the regulation makes good sense for State fisheries. However, the regulation is not inclusive enough for the Federal program since there are subsistence fisheries for steelhead, trout, Dolly Varden, brook trout and grayling.

If Federal regulations can be interpreted by some as allowing the accumulation of daily harvest or possession limits in the Federal subsistence and State sport, subsistence or personal use fisheries, then action by the Board to address this issue is appropriate.

There are then two separate questions that will need discussion:

1. Is it the intent of the Board to allow the accumulation of daily/possession Federal subsistence harvest limits with daily/possession harvest limits in the State subsistence, personal use or sport fishery harvest limits?
2. Is it the intent of the Board to allow the accumulation of annual or seasonal harvest limits in the Federal subsistence fishery with annual, or daily/possession harvest limits in the State sport fishery?

Changes to provide clarity to current Federal regulations are appropriate to clearly describe decisions made by the Board.

OSM CONCLUSION

Support Proposal FP09-02 **with modification**, to allow the accumulation of Federal annual or seasonal harvest limits with State sport fishing harvest limits as long as they are not possessed at the same time.

> *§___.27(i)(13) Southeastern Alaska Area.*
> *(vii) You may* ***not*** *accumulate* ~~*annual*~~ *Federal subsistence harvest limits authorized for the Southeastern Alaska Area with* ***any*** *harvest limits authorized under* ***any*** *State of Alaska* ~~*sport*~~ ***fishery*** ~~*fishing*~~ ***with the following exception. Annual or seasonal Federal subsistence harvest limits may be accumulated with State sport fishing harvest limits provided that accumulation of harvest limits does not occur during the same day.***

In order for the Federal regulations to have a rational basis and continue on a parallel track with State regulations, the following change to another relevant regulation must be made.

> *(xi) You may not possess subsistence-taken and sport-taken salmon,* ***steelhead, Dolly Varden, brook trout, grayling, cutthroat, and rainbow trout*** *on the same day.*

Justification

Recommended actions are to:

1. Prohibit the accumulation of Federal Subsistence harvest limits with any harvest limit in the State subsistence or personal use fisheries.
2. Prohibit the accumulation of Federal Subsistence harvest limits with the daily or possession limits in the State sport fishery.
3. Allow the accumulation of annual or seasonal Federal subsistence harvest limits with State sport fishery harvest limits, providing they are not possessed on the same day.

Modifying current Federal regulations as recommended will clarify the intent of rules controlling the accumulation of harvest limits under Federal and State authorized fisheries in the Southeastern Alaska Area. Although the modified proposal contains redundant language already contained within Sections__. 25(c)(1) and 27(a)(2), the nature of the exception is more clearly described if the general restriction is included to provide context. The suggested modification allows a qualified subsistence user to participate in the State's sport fishery in addition to harvesting either an annual or seasonal Federal subsistence harvest limit. The Board has previously determined that Federal subsistence steelhead regulations are conservative and sustainable.

Federal subsistence and State subsistence and personal use regulations are designed to allow the full harvest limit to the respective users. Accumulating or combining those limits is not appropriate and

could result in conservation issues. Based on previous Board actions, it was not the intent to allow the accumulation of Federal subsistence harvests with the daily or possession limits allowable in the State subsistence, personal use and sport fisheries. The suggested language clearly states that a Federal subsistence user cannot possess fish taken under subsistence regulations with fish taken under any State authorized fishery. A subsistence user can harvest fish in the State sport fishery on a different day once the subsistence taken fish are no longer in possession.

LITERATURE CITED

FSB. 2003. Transcripts of Federal Subsistence Board proceedings, December 9, 2003. Anchorage, AK.

FSB. 2005. Transcripts of Federal Subsistence Board proceedings, January 12, 2005. Anchorage, AK.

INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-02

The Interagency Staff Committee (ISC) found the staff analysis for Proposal FP09-02 to be a thorough and accurate evaluation of the proposal. The ISC discussed two substantive issues regarding FP09-02. The first issue was whether the primary intent of the proposal was simply to provide clarity to the current Federal subsistence regulations regarding accumulation of limits or, if the proposal was simultaneously intended to change regulations to address an imminent fishery conservation issue. There was agreement that users will benefit from having the Board provide clear, unambiguous regulatory language regarding harvest accumulation. However, contrary to the proponent's views, the general perception among the committee members was that current levels of use by Federally qualified subsistence users is very low and has not created any fish resource conservation problems. The proponent's position is that diminutive fish stocks, primarily the steelhead population(s), may be put at risk of overexploitation by Federally qualified subsistence users accumulating federal subsistence harvest limits and state sport harvest limits. ISC members felt the proposal addresses a perceived potential for creating conservation problems, but it is not responding to conservation problems that currently exist.

The second issue discussed by the ISC concerned the modifications in OSM's conclusion. Some ISC members questioned whether there was an actual need for section §__.27(i)(13) (xi), which deals with same day possession of subsistence-taken and sport-taken fish. Because of the OSM's modified wording in §__.27(i)(13) (vii) which would restrict accumulation of limits, some ISC members felt the new language could legitimately be removed from the modified proposed language without compromising the enforceability of section (vii).

The Southeast Regional Advisory Council opposed the original proposal as submitted by the State of Alaska and did not vote on the modified language put forth in the OSM analysis. Nevertheless, there was some discussion by the ISC that section (xi), as modified, was potentially being viewed as too restrictive towards Federally qualified subsistence users and not simply a modification of an existing regulation. The ISC agreed that Federal subsistence regulations were designed to allow subsistence users to meet subsistence needs without having to accumulate State and Federal harvest limits, and that participation in subsistence activities should not preclude an individual from engaging in lawful sport fishing at a future time.

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-02 Accumulation of Harvest Limits in Southeast Alaska

Introduction: Proposal FP09-02 requests a clarification of the federal prohibition against accumulating annual and daily federal subsistence harvest limits with State of Alaska (State) sport fishing harvest limits in Southeast Alaska. Current federal subsistence regulations for the Southeast Region could be misinterpreted to allow accumulation of federal annual subsistence limits and State sport fishing limits. Current federal language which allows accumulation of annual harvest limits should be revised to clearly prohibit harvest from the same stock or species in a sport fishery once the user has reached the permitted federal subsistence daily or annual harvest limit.

Background: During the recent Southeast Regional Advisory Council meeting, Forest Service staff reminded the Council of federal subsistence program legal counsel advice that the federal subsistence harvest limits should be set high enough to meet the subsistence user's needs (where there is no conservation concern) without having to accumulate federal and State harvest limits. The federal subsistence program has no authority to regulate State sport fishing except to close federal lands to nonsubsistence use, and the Federal Board should not attempt to rely on accumulation of State sport fishing limits to provide the federal subsistence priority.

Impact on Subsistence Users: Adoption of this proposal should have little or no effect on federal subsistence uses because it would not prevent a federal subsistence user from sport fishing on a different day after filling their federal daily/annual limit as long as a sport fishing annual limit does not exist in that fishery. Southeast regional federal subsistence regulations already prohibit federal subsistence users from possessing federal subsistence and sport-taken salmon on the same day, effectively prohibiting accumulation of daily harvest limits for salmon. State sport fishing regulations already prohibit possession of more than the sport fishing harvest limit while sport fishing. Other than eliminating a source of confusion, adoption of this proposal would only impact nonsalmon federal subsistence fishers who desire to transfer possession of their catch and then accumulate harvest limits of federal subsistence and State fisheries.

Enforcement Issues: Adoption of this proposal will reduce the likelihood of State enforcement actions being taken against federal subsistence users who might otherwise incorrectly believe that they can possess and/or harvest additional fish in a State fishery the same day after filling their federal limit. The lack of clarity in current federal regulations may impair enforceability of the federal prohibitions on accumulation while also putting federal subsistence fishers at risk of being cited under State enforcement regulations. These unclear regulations and enforcement risks create concerns where effective daily limits are needed for effective management and conservation.

Jurisdiction Issues: Many streams in Southeast Alaska flow through non-federal land. The State disputes many of the federal reserved water right claims in Southeast Alaska. The State also disputes application of federal subsistence regulations in numerous streams and rivers that are not within federal lands. Detailed maps are needed of lands where federal jurisdiction is

claimed, and the basis of each claim should be explained. In addition, fishers need to be provided copies of these detailed maps and warned that the State will enforce its regulations on fishers standing on nonfederal land.

Opportunity Provided by State: Personal use fisheries are generally established for areas which are considered non-rural or non-subsistence areas by State of Alaska regulation although they may extend into other areas. Personal use fisheries are differentiated from commercial fisheries because the sale of personal use harvest is not appropriate or permissible under State law. Personal use fisheries are differentiated from subsistence fisheries because the personal use is not customary and traditional use and is not prioritized. Furthermore, the personal use fisheries are differentiated from the sport fisheries because the gear types used for personal use fisheries are usually different from that historically associated with sport fishing. Statewide sport fishing regulations (5 AAC 75.010) prohibit a person engaged in sport fishing from possessing more than the limit of fish allowed for the water on which the person is sport fishing. The State also explicitly prohibits possessing sport and personal use caught salmon (5 AAC 77.682 (e)) or sport and subsistence caught salmon (5 AAC 01.730) on the same day.

Conservation Issues: Adoption of this proposal may protect fish populations from over-exploitation by preventing development of conservation concerns due to excessive harvest that could occur in federal subsistence fisheries if users are allowed to accumulate daily and seasonal harvests from both the federal subsistence and State fisheries. The Department, through the Alaska Board of Fisheries, has invested decades into developing conservative fisheries management plans, sustainable exploitation rates, and time-proven fishery regulations which establish daily and annual limits ranging from sweeping regional limits and gear restrictions applicable to specific sections of river tributaries. The evolution of each conservative fishing regulation is either based upon historic and scientific data or, where such data are not available, is based upon the best information available, including long term average harvest information which indicates levels of harvest of a fish stock with a high probability of being sustainable.

The Department has conservation concerns regarding daily and/or annual accumulation limits between the State and federal subsistence fisheries. These concerns revolve around the potential for over-exploitation of diminutive stocks in small systems by allowing federal subsistence users to accumulate daily harvest limits from a single fishing hole on a small stream on a single day. An example is a federal subsistence user fishing for cutthroat trout in a high use area harvesting the daily bag limit of 10 trout or one steelhead trout, then transferring possession and continuing to fish under sport fishing regulations to harvest another daily limit.

Other Issues: Proposals FP09-02 and 09-03 contain language which is similar in intent but different in scope and specificity. FP09-02 was submitted to clarify regional accumulation regulations in Southeast Alaska. A portion of FP09-03 was submitted to address accumulation of harvest limits between federal subsistence fisheries and State sport fisheries for steelhead trout only in Southeast Alaska.

State of Alaska fisheries in Southeast Alaska do not allow possession of both sport and subsistence or sport and personal use harvested salmon on the same day. The State sport, subsistence, and personal use fishery structure precludes exceeding more than one harvest limit

by targeting a single stock with the same gear under separate fishery regulations. The personal use and subsistence fisheries are normally in different areas and require different gear types, and the prohibition on possessing more than the sport fish limit while sport fishing acts as a significant barrier to accumulating limits across fisheries.

This proposal is not intended to prohibit federal subsistence users from filling their annual or seasonal harvest limit on one day and sport-fishing for the same stock with legal sport-fishing gear and with a sport-fishing license on a different day as long as the user has not achieved the annual State harvest limit for the year.

A cooperative evaluation by federal and State staff of the proposal's language, confusion evident at the Southeast Regional Advisory Council meeting, and subsequent consultation with the Interagency Staff Committee resulted in Office of Subsistence Management proposing a modification that satisfactorily resolves the lack of clarity in the existing federal regulations, which was the basis for the State's proposal.

Recommendation: Support the modification proposed by Office of Subsistence Management.

FP09-03 Executive Summary	
General Description	Proposal FP09-03 would alter various management components of the Prince of Wales (POW)/Kosciusko Islands and the Southeast Alaska Federal subsistence steelhead fisheries. *Submitted by the Alaska Department of Fish and Game*
Proposed Regulation	See analysis for the proposed regulatory language.
Southeast Regional Council Recommendation	**Oppose**
Interagency Staff Committee Comments	See Comments following the analysis.
ADF&G Comments	**Support**
Written Public Comments	**1 Oppose** **1 Support**

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-03

SOUTHEAST REGIONAL ADVISORY COUNCIL

Oppose Proposal FP09-03**.** The Council disagreed with the State comments regarding the potential for a conservation concern due to subsistence harvest of steelhead and recommends opposing this proposal. This proposal is an unnecessary restriction on subsistence users as there are no actual examples of conservation problems caused by current regulations. The great majority of steelhead harvested in Southeast Alaska is taken in the commercial fishery. The ADF&G has shown no interest in documenting the total harvest of steelhead. Subsistence harvest at the current level is too small to be considered a conservation issue. Local managers can specify more restrictive management measures as a permit condition, as needed for conservation.

STAFF ANALYSIS
FP09-03

ISSUES

Proposal FP09-03, submitted by the Alaska Department of Fish and Game (ADF&G), would alter various management components of the Prince of Wales (POW)/Kosciusko Islands and the Southeast Alaska Federal subsistence steelhead fisheries.

DISCUSSION

The proponent believes the Federal subsistence fisheries for steelhead will lead to over-harvest of steelhead stocks. ADF&G believes that these regulation changes, along with anticipated changes in State regulations, will ensure the conservation of steelhead stocks in Southeast Alaska while still providing a meaningful preference to Federally qualified subsistence users. This proposal addresses six items of concern that have either been considered previously through the Federal regulatory process or through the consultation process as directed by the Federal Subsistence Board.

Items of concern to the proponent include:

1. The use of bait.
2. The locations of allowable harvest.
3. The use of handlines in drainages where size restrictions apply to any specie.
4. The accumulation of Federal annual harvest limits with State sport harvest limits.
5. The mandatory fin clipping of subsistence taken steelhead.
6. The possession of subsistence and sport caught steelhead on the same day.

Further clarification with ADF&G indicated that their intent with accumulation was only to be related to trout and steelhead. The regulatory language the proponent intends might read:

> *(vii)* ***For trout and steelhead,*** ~~*Y*~~ ***y****ou may* ***not*** *accumulate annual Federal subsistence harvest limits authorized for the Southeastern Alaska Area with harvest limits authorized under State of Alaska sport fishing regulations.*

This analysis will cover the following concerns: bait use, locations of harvest, handline use, and fin clipping of subsistence taken steelhead. The issues of daily and annual accumulation with State harvest limits will be covered in the analysis of FP09-02.

Existing Federal Regulation

> *§___.27(i)(13) Southeastern Alaska Area*
>
> *(iv) In areas where use of rod and reel is allowed, you may use artificial fly, lure, or bait when fishing with rod and reel, unless restricted by Federal permit. If you use bait, you must retain all Federally regulated fish species caught, and they apply to your applicable daily, seasonal, and annual harvest limits for that species.*
>
> *(A) For streams with steelhead, once your daily, seasonal, or annual limit of steelhead is harvested, you may no longer fish with bait for any species.*

(B) Unless otherwise specified in this § 100.27(i)(13), allowable gear for salmon or steelhead is restricted to gaffs, spears, gillnets, seines, dip nets, cast nets, handlines, or rod and reel.

(v) Unless otherwise specified in this § 100.27(i)(13), you may use a handline for snagging salmon or steelhead.

(vii) You may accumulate annual Federal subsistence harvest limits authorized for the Southeastern Alaska Area with harvest limits authorized under State of Alaska sport fishing regulations.

(x) You must immediately remove both lobes of the caudal (tail) fin of subsistence-caught salmon when taken.

(xi) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xviii) Unless otherwise specified in this § 100.27(i)(13), you may take steelhead under the terms of a subsistence fishing permit. The open season is January 1 through May 31. The daily household harvest and possession limit is one with an annual household limit of two. You may only use a dip net, gaff, handline, spear, or rod and reel. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xix) You may take steelhead trout on Prince of Wales and Kosciusko Islands under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

(xx) There is no subsistence fishery for any salmon on the Taku River.

(A) The winter season is December 1 through the last day of February, with a harvest limit of two fish per household. You may use only a dip net, handline, spear, or rod and reel. The winter season may be closed when the harvest level cap of 100 steelhead for Prince of Wales/Kosciusko Islands has been reached. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of five fish per household. You may use only a dip net, handline, spear, or rod and reel. The spring season may be closed prior to May 31 if the harvest quota of 600 fish minus the number of steelhead harvested in the winter subsistence steelhead fishery is reached. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xx) In addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, brook trout, grayling, cutthroat, and rainbow trout apply:

Proposed Federal Regulation

§___.27(i)(13) Southeastern Alaska Area

(iv) In areas where use of rod and reel is allowed, you may use artificial fly, lure, or bait when fishing with rod and reel, unless restricted by Federal permit. ***Permits shall prohibit use of bait in waters where steelhead may be present unless retention of steelhead is permitted in the waterbody.*** *If you use bait, you must retain all Federally regulated fish species caught, and they apply to your applicable daily, seasonal, and annual harvest limits for that species.* ***You may no longer fish with bait for any species when you have harvested your daily, seasonal, or annual limit of any species.***

(A) For streams with steelhead, ***fishing with bait is prohibited unless retention of steelhead is permitted in the stream; retention of steelhead in a stream may be authorized by permit only where ADF&G and OSM agree that the steelhead stock in that stream has a harvestable surplus and that adequate monitoring or surveys are in place to ensure that allowing retention will not result in overharvest.*** ~~*once your daily, seasonal, or annual limit of steelhead is harvested, you may no longer fish with bait for any species.*~~

(B) Unless otherwise specified in this § 100.27(i)(13), allowable gear for salmon or steelhead is restricted to gaffs, spears, gillnets, seines, dip nets, cast nets, handlines, or rod and reel.

(v) Unless otherwise specified in this § 100.27(i)(13), you may use a handline for snagging salmon or steelhead. ***You may not snag where a size limit applies to a species present in the area.***

(vii) You may ***not*** *accumulate annual Federal subsistence harvest limits authorized for the Southeastern Alaska Area with harvest limits authorized under State of Alaska sport fishing regulations.*

(x) You must immediately remove both lobes of the caudal (tail) fin of subsistence-caught salmon ***and steelhead*** *when taken.*

(xi) You may not possess subsistence-taken and sport-taken salmon ***or steelhead*** *on the same day.*

(xviii) Unless otherwise specified in this § 100.27(i)(13), you may take steelhead ***only*** *under the terms of a subsistence fishing permit* ***and only in waters specifically designated on that permit during seasons designated on that permit; separate permits may be required for winter and spring seasons****. The open season is January 1 through May 31. The daily household harvest and possession limit is one with an annual household limit of two. You may only use a dip net, gaff, handline, spear, or rod and reel. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.*

(xix) You may take steelhead trout on Prince of Wales and Kosciusko Islands ***in streams designated*** *under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.*

A) The winter season is December 1 through the last day of February, with a harvest limit of two fish per household. You may use only a dip net, handline, spear, or rod and reel. The winter season may be closed when the harvest level cap of 100 steelhead for Prince of Wales/Kosciusko

Islands has been reached. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of five fish per household. You may use only a dip net, handline, spear, or rod and reel. The spring season may be closed prior to May 31 if the harvest quota of 600 fish minus the number of steelhead harvested in the winter subsistence steelhead fishery is reached. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xxi) In addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, brook trout, grayling, cutthroat, and rainbow trout apply:

Existing State Regulations

5 AAC 01.730 (i) The department shall not issue a permit for the taking of steelhead trout, but steelhead trout taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any steelhead trout taken in this manner on his or her permit calendar.

5 AAC 01.740 Subsistence fishermen shall immediately remove the dorsal fin of all salmon when taken.

5 AAC 77.682 (d) Salmon, trout, or char taken incidentally by gear operated under the terms of a personal use permit for salmon are legally taken and possessed for personal use purposes. The holder of a personal use permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

5 AAC 77.010 (f) A person may not possess salmon taken under the authority of a personal use salmon fishing permit unless both tips of tail fin have been removed from the salmon before the salmon is concealed from plain view or transported from the fishing site.

5 AAC 47.022 General provisions for seasons and bag, possession, annual, and size limits for the fresh waters of the Southeast Alaska Area.

(b) In the fresh waters east of the longitude of Cape Fairweather:

(4) steelhead may be taken from January1–December 31; Bag limit of 1 fish; Possession limit of two fish; must be 36 inches or greater in length; Annual limit of two fish; A harvest record is required as specified in 5AAC 47.024(C)

Other Related Proposals

ADF&G has also submitted proposal FP09-02. FP09-02 requests a prohibition on an annual and daily accumulation of sport fishing limits following the harvest of an annual Federal harvest limit within the

Southeastern Alaska Area. The proposal would apply to all Federally regulated fish species that have an annual limit. The daily accumulation prohibition would only apply to non-salmon species in Southeast, as the daily accumulation of salmon is already prohibited by Federal regulation (§___.27(i)(13)(xi)).

Extent of Federal Public Waters

Federal public waters involved are waters within the exterior boundary of the Tongass National Forest in the Southeastern Alaska Area excluding marine waters.

For purposes of this discussion, the phrase "Federal public waters" is defined as those waters described under 50 CFR 100.3.

Customary and Traditional Use Determinations

All customary and traditional use determinations for Southeast Alaska apply and are listed in **Appendix A**.

Regulatory History

State Regulatory History

Prior to the first Federal subsistence fishery for steelhead established in 2002, all steelhead harvest occurred under State of Alaska sport fish regulations or incidental to subsistence or commercial fisheries.

Although there are customary and traditional use determinations for steelhead in State subsistence regulations for portions of Districts 3B and 3C, and all of Districts 7 and 8 in Southeast Alaska, State regulations prohibit issuing subsistence permits for steelhead. However, steelhead taken incidentally under the terms of a subsistence permit for salmon may be legally retained. Permit holders are required to report any steelhead incidentally taken, but are not required to mark them by clipping fins.

From 1978 through 1992, the sport fishing daily harvest and possession limit was one steelhead per day. During the 1993/94 regulatory cycle for Southeast Alaska, the Alaska Board of Fisheries modified sport and commercial fishing regulations. Region-wide sport fishing regulations were changed to allow a harvest of one fish per day and two fish per year, 36 inches or greater in length to reduce the harvest. However, the daily harvest limit is two fish if at least one has a clipped adipose fin, as evidenced by a healed scar. There is no size limit for steelhead with a clipped adipose fin. A clipped adipose fin identifies a hatchery produced steelhead. The Alaska Board of Fisheries also prohibited the use of bait from Nov. 16–Sept. 14. Lastly, the Alaska Board of Fisheries prohibited the sale of steelhead caught in commercial net fisheries. In commercial purse seine and gillnet fisheries of Southeast Alaska, Commercial Fisheries Entry Commission permit holders may now retain steelhead for personal use, but not sell them. Steelhead caught in the commercial troll fishery (typically from July through September) may be sold.

During the 2003 Alaska Board of Fisheries cycle, the region-wide sport regulation for steelhead was revised. The revision was a regulatory "housekeeping" action, submitted by ADF&G, to specify that the two fish daily harvest limit would only apply to the Klawock River and Ketchikan Creek: the only two locations where adipose clipped steelhead may be found.

In January 2006, the Alaska Board of Fisheries adopted a regulation (5AAC 33.395) that gave authority to the Commissioner of ADF&G to require steelhead harvested in the commercial salmon fisheries and retained for personal use to be reported on fish tickets. The intent of the regulation is to account for the

harvest of all steelhead trout. To date, the Commissioner has only implemented this requirement in the District 8 Stikine Terminal Chinook fishery.

Currently, the Alaska Board of Fisheries has a steelhead related proposal (Proposal 290) that they will consider in February 2009. This proposal, submitted by ADF&G, would limit the retention of steelhead to only 16 systems in the Southeast Alaska Area. The proposal does not prohibit catch and release fishing of steelhead on the other drainages where retention would be prohibited. The proposal is intended to benefit both subsistence and sport users by preventing stock depletions as "conservation concerns may occur as a result of the creation and subsequent expansion and liberalization of Federal subsistence harvest of steelhead in Southeast Alaska." The proposal would also change the methods allowed in sport fishing regulations for three drainages on POW to single hook only waters (ADF&G 2008).

Federal Regulatory History

The Federal Subsistence Board (Board) adopted FP03-25 resulting in a Federal subsistence fishery for steelhead on Prince of Wales Island in 2002. The following year, the Board adopted FP04-33 to add Kosciusko Island to this fishery. This fishery has two seasons (Winter – Dec. 1–Feb. 28/29; Spring – Mar. 1–May 31) with separate seasonal harvest limits (Winter – 2 steelhead; Spring – 5 steelhead per household), permits (winter and spring), and special conditions identified by the in-season manager which are included on the permit. Legal gear includes dip net, rod and reel, handline, and spear. The two fisheries may be closed when a harvest cap is reached (100 steelhead for winter season and 600 minus the winter harvest for the spring season). Harvest reports are due by March 15 for the winter fishery and by June 15 for the spring fishery, or within 15 days after harvest of a seasonal limit of steelhead.

In 2005, the Board adopted FP05-28 resulting in a Federal subsistence fishery for steelhead in the remainder of Southeast Alaska. Special conditions identified by the in-season manager are included on the permit. Under the terms of a Federal permit, a household may take one steelhead daily and no more than two annually from Jan. 1–May 31. Legal gear includes dip net, rod and reel, handline, spear, and gaff. Harvest reports are due by June 15 or within 15 days after harvest of an annual limit of steelhead.

Rather than implementing separate regulations by drainage in the fisheries, the Board directed that "*permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.*" This management authority to set permit conditions for conservation is delegated to local area fishery managers. Federal fisheries managers have implemented these regulations by applying stipulations to Federal subsistence fishing permits after consultation with ADF&G. Since 2003, in both the POW/Kosciusko and Southeast Alaska subsistence steelhead fisheries, local Federal managers have applied special conditions to permits. Examples of special restrictions include: gear restrictions, no retention of steelhead, minimum size limits, and mandatory 24 hour reporting of harvest. These special conditions can be found in **Appendix B**.

Mandatory fin clipping and possession of subsistence and sport taken trout and steelhead

Subsistence users are not required to mark subsistence taken trout, steelhead or char by fin clipping. Federal subsistence users must only remove the caudal fin of salmon when taken. The primary purpose of marking is to prevent subsistence taken salmon from mixing with commercially taken salmon in the market place. There is no commercial market for trout and char, except for a very limited commercial sale of troll caught steelhead. There are no directed commercial fisheries for steelhead in Southeast Alaska. Those caught incidentally in commercial net fisheries may not be sold, but may be retained for personal use.

In December 2003, the Board rejected FP04-34, which would have required fin clipping of subsistence taken trout and char and prohibited the accumulation of Federal subsistence and State sport fishing limits for trout and char on the same day. During the Southeast Alaska Subsistence Regional Advisory Council (Council) meeting in Craig, the Council opposed the proposal. Although the Council book indicated that ADF&G wanted to support the proposal, ADF&G changed its recommendation to neutral during discussion on the proposal (SERAC 2003). The Board did not discuss this proposal because it was on the consent agenda (FSB 2003).

Use of handlines

In January 2005, the Board adopted FP05-20 which further defined the use of handlines for subsistence harvesting. Although the original proposal requested the use of handlines for harvesting salmon, the Board adopted a recommendation from the Council to add handlines as a legal gear type for steelhead. The decision was based on findings from both ADF&G's steelhead harvest methods study (Turek 2005) and testimony at the Council meeting (FSB 2005).

Use of bait in subsistence rod and reel fisheries

Prior to 2006, the use of bait was only allowed with rod and reel from September 15 to November 15 in both the State sport fishery and the Federal subsistence salmon fishery. This time frame allows the use of bait for targeting coho salmon while minimizing catch and release mortality of trout and steelhead.

In January 2006, the Board adopted FP06-24 with modification as recommended by the Council. This action removed the prohibition of the use of bait to increase the harvest efficiency of rod and reel gear. To eliminate catch and release mortality of trout and steelhead, language was added that requires the fisher to retain all fish caught with bait. The language also indicated that "once your daily or annual limit of steelhead is harvested, you may no longer fish with bait for any species." Any concern over particular drainages would be covered through permit conditions set by the local Federal manager (FSB 2006).

Biological Background

Steelhead are the anadromous form of rainbow trout (*Oncorhynchus mykiss*). Steelhead are known to return to 331 freshwater systems in Southeast Alaska (ADF&G 2002). Peak numbers of steelhead occur in streams in late April and May. Fall and spring run fish (freshwater or ocean maturing) generally spawn at the same time but residence time in streams is longer for fall run (freshwater maturing) fish. Spring run fish (ocean maturing) are most abundant in Southeast Alaska, but it is not uncommon for the same streams to contain a smaller number of fall run fish (Lohr & Bryant 1999).

A three year steelhead assessment project (05-604), funded by the Fisheries Resource Monitoring Program, began in 2005 on POW. This was a joint Federal, State, and Tribal agency study. Investigators placed weirs on two streams each year. The goal was to study both a "small" (thought to contain <150 adult steelhead) and a "large" (>150) population each year. Road access and identified harvest were factors in choosing the study sites. Although the original goal was six different drainages, weather and road conditions only allowed for five to be studied. One drainage was assessed twice. Weirs were placed in the Harris River and Big Ratz Creek during 2005, Cable Creek and Eagle Creek in 2006, and Natuzhini Creek and Big Ratz Creek during 2007.

Steelhead were counted as they passed through the weirs. Length measurements were taken, gender recorded, scales collected for aging, and fish were marked with either a caudal clip or punch. Preliminary

length data from this project suggests that 1.4 percent of the 1,229 steelhead sampled met the minimum sport size limit (Piazza 2008, pers. comm.).

Data from these projects has been used to manage the POW fishery. For example, data from the 2005 project was used to change the management of the Harris River steelhead fishery. The Harris River was thought to be a "large" system, but the weir count was lower than expected. Accordingly, in 2006, the Harris River was placed on the list of small, road accessible streams requiring extra protection measures. Big Ratz Creek, on the other hand, was originally thought to be a "small" system but, weir counts indicated otherwise, and this creek was removed from the list of small, road accessible streams with extra protection measures. These management changes are displayed in **Appendix B**.

Harvest History

Goldschmidt and Haas (1998) documented use of trout by Tlingit from Skagway to Saxman. The Tlingit name for steelhead is *Aashat* (written *ah shut* in Emmons [1991]). Trout fishing occurred at least in the winter, spring, and fall and was accomplished using a variety of gear, including weirs, spears, baskets/ traps, lines with small wooden hooks, and nets (Emmons 1991, Goldschmidt & Haas 1998).

While researching steelhead harvest methods on POW (FIS project 01-105), Turek (2005) found evidence of handlines and rod and reel with bait being used for taking steelhead:

> Gear — Steelhead were traditionally harvested with spears and gaffs, they were also caught in weirs and traps along with salmon. Since at least the 1950s, rod and reel tackle have been used in the larger rivers. Spin casting gear (with and without bait) has been commonly used since the 1950s. Today, some subsistence fishers are using fly rods and artificial flies. The small, brushy, log choked creeks on Prince of Wales Island are difficult to fish with rod and reel tackle. Spears, gaffs and hand lines (snagging gear) are the preferred gear for the smaller creeks. Snagging gear—locally made treble hooks, consisting of three halibut hooks bound together with line and secured to a hand line—has been used for at least 75 years on the island. Known in Hydaburg as the "Hydaburg Snagger," these treble hooks are also used in Klawock, and at one time marketed in a local store as the "Klawock Spinner." The snagging gear (hand line and treble hook) can be thrown or used in conjunction with a pole of various lengths. The pole is often made in the field from a limb or branch of a tree or bush. The pole, held by the fisher, has the hand line running down the pole and through a forked end with treble hooks hanging off the forked end of the pole. By using a pole the fisher can place the hook close to a fish before setting the hook. When hand line, treble hook and pole are used in this fashion, the gear functions as a gaff. Spears, gaffs and snagging gear are the preferred gear for fishers fishing the small, brushy creeks on Prince of Wales Island.

State Subsistence Harvest

There are no directed State subsistence fisheries for steelhead in the Southeast Alaska Area. Steelhead incidentally harvested while subsistence fishing for salmon may be retained and must be recorded on the State subsistence and personal use salmon permit. No steelhead harvest was reported from 1985 to 2001 (Zadina 2002, pers. comm.). Since 2002, eight steelhead have been reported on State fishing permits for the Southeast Area (Kelley 2008, pers. comm.).

Federal Subsistence Steelhead Harvest

There are three Federal steelhead fisheries that occur under the terms of a Federal subsistence fishing permit. Local Federal managers monitor harvest during these fisheries. Monitoring includes visual assessments, interviews with and phone calls to anglers to determine harvest rates by fishermen, and observations using in-stream snorkel counts. Law enforcement officers check anglers to insure they have the proper permits or licenses. Using monitoring information, the local Federal managers have the authority to close down these fisheries when and if conservation concerns arise. Federal permit returns for the three fisheries has been nearly 100 percent (Forest Service 2008) reporting low harvest and effort. The present Federal management is commensurate with the level of harvest. Each of the three Federal steelhead fisheries is described in more detail below. **Table 1** summarizes the Federal steelhead fisheries by year, gear type, and associated harvest.

Table 1. Federal steelhead harvests by fishery, year, and gear type (Forest Service 2008).

		Harvest Per Year						
Fishery	**Gear**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**Total**
POW Spring Steelhead	Dip Net			1	2			3
	Gillnet				2			2
	Hand Line			1		1	1	3
	Rod and Reel	24	25	20	32	16	25	142
	Spear		1	5	2	1		9
POW Winter Steelhead	Rod and Reel	2	5	2		1		10
SE Steelhead	Gaff			2				2
	Rod and Reel			6	10	6	1	23
Total		26	31	37	48	25	27	194

POW/Kosciusko Spring Season Federal Subsistence Steelhead Fishery

This steelhead fishery began in 2003. Although 76 permits were issued during the first season, the average number of issued permits per season since has been 52. Harvest from 2003–08 has averaged 27 steelhead per season. Of the 335 permits issued throughout the history of this fishery, five have reported taking a full household harvest limit of five steelhead, and only one has reported taking that limit within the same day. Reported harvests have been in March, April, and May. The use of bait to harvest steelhead by Federally qualified users has been very low. During 2007, only four Federal permits reported using bait during the fishery. Incidental harvest during this fishery has been very low, with the harvest of eight trout and 11 Dolly Varden being reported on Federal permits (Forest Service 2008). Lists of harvest locations and number by gear type by year are displayed in **Table 2**. In-season action has occurred only once in the history of this fishery. In April 2006, the local Federal manager closed Cable Creek to all fishing during the steelhead run when the illegal harvest of 10 steelhead was reported.

POW/Kosciusko Winter Season Federal Subsistence Steelhead Fishery

This steelhead fishery began in 2003, with harvest and effort being very low. From 2003–07, Federal steelhead harvests have ranged from zero to five per season, with the number of permits issued ranging from ten to 18 per season. Reported harvests have all been in the month of February. Since 2003, only three of the 71 issued permits have reported taking a household limit of two steelhead. No use of bait has been reported in this fishery. This fishery is greatly affected by weather. In 2006 and 2007, fishing effort

Table 2. Prince of Wales spring steelhead harvest by year, location, and gear type (Forest Service 2008).

			Harvest Per Year						
Fishery	**Gear**	**Water Body**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**Total**
POW Spring Steelhead	Dip Net	Hydaburg River				2			2
		Ratz Creek			1				1
	Gillnet	Ratz Creek				2			2
	Hand Line	Alder Creek			1				1
		Maybeso Creek					1		1
		Staney Creek						1	1
	Rod and Reel	Cable Creek			1			1	2
		Eagle Creek		1	1	4		2	8
		Harris River		2	3		2	1	8
		Karta River		1	2	4	1	1	9
		Klawock River	11	8	5	6	4	3	37
		Luck Creek				1			1
		Ratz Creek				1			1
		Staney Creek	3	10	5	13	6	8	45
		Thorne River	10	3	3	3	3	9	31
	Spear	Eagle Creek				1			1
		Flicker Creek			1				1
		Harris River		1					1
		Luck Creek				1			1
		Maybeso Creek					1		1
		Ratz Creek			2				2
		Saltery Creek			2				2
Total			24	26	27	38	18	26	159

was very minimal with only one steelhead reported during both seasons. This was most likely due to heavy snowfall which prevented access to fishing sites. Lists of harvest locations and the reported number of steelhead harvested by gear type are displayed in **Table 3** (Forest Service 2008).

Southeast Alaska Federal Subsistence Steelhead Fishery

This steelhead fishery began in 2005. From 2005–08, the average reported steelhead harvest has been six per season. The total number of permits issued each year has ranged from 13 to 33. Reported harvests have occurred in April and May. Since 2005, of the 94 permits issued, only five have reported taking a household limit of two steelhead. Lists of harvest locations and the reported number of steelhead harvested by gear type by year are displayed in **Table 4** (Forest Service 2008).

Table 3. Prince of Wales Winter steelhead harvest by year, location, and gear type (Forest Service 2008).

			Harvest Per Year				
Fishery	**Gear**	**Water Body**	**2003**	**2004**	**2005**	**2007**	**Total**
POW Winter Steelhead	Rod and Reel	Klawock River	2	5	1	1	9
		Thorne River			1		1
Total			2	5	2	1	10

Table 4. SE Alaska Federal steelhead harvest by year, location, and gear type (Forest Service 2008).

			Harvest Per Year				
Fishery	**Gear**	**Water Body**	**2005**	**2006**	**2007**	**2008**	**Total**
SE Steelhead	Gaff	Point White Creek	2				2
	Rod and Reel	Ford Arm			1		1
		Freshwater Creek		1			1
		Game Creek		2	1		3
		Iyouktug Creek				1	1
		Kadake Creek	2				2
		Lake Eva	1				1
		Leo Creek		1			1
		Mud Bay River			1		1
		Point White Creek	2				2
		Salamander		1			1
		Salmon Lake Creek		2	3		5
		Sitkoh Creek	1				1
		Spasski Creek		2			2
		Suntaheen Creek		1			1
Total			8	10	6	1	25

Sport Harvest

Although the State requires sport fishers that harvest steelhead to record their fish on the back of their fishing license in ink, they are not required to submit or report their harvest directly to ADF&G. The yearly sport steelhead harvest is determined by the Statewide Harvest Survey which is mailed out randomly to fishing license holders each year. Depending on the number of responses per drainage, some estimates could possibly overstate the harvest due to limitations in expanding low numbers of responses (ADF&G 2007).

From 1989 to 1994, the average reported steelhead harvest was 2,700 per year for Southeast Alaska (Howe et al. 2001). Since the more restrictive sport fishing regulations went into effect in 1994 the reported harvest of steelhead in the sport fishery has been relatively small in southeast Alaska. The average steelhead harvest from streams in Southeast Alaska from 1995 to 2004 was 138 per year (Jennings et al. 2007) which is nearly five times higher than the average Federal subsistence harvest. From 2001 to 2004 the average reported sport harvest in Southeast Alaska was 168 steelhead. The average

reported catch during that time was 3,903 steelhead per year (Jennings et al., 2007). To be conservative, managers commonly assume a hooking mortality of 2–5 % for fish caught with artificial lures (Hooten 2001, ADF&G 2008b). If 2–5% of the fish caught died after release due to catch and release mortality, the resulting mortality average each year would range from 98 to 195 steelhead during that period.

Commercial Harvest

There is no directed commercial fishing for steelhead. Nevertheless, incidental harvest in commercial salmon fisheries occurs, and has ranged from a low of 533 in 1975 to a high of 11,540 in 1986 for all of Southeast Alaska. The majority of the catch (65%) occurred in the gillnet fisheries and the least (1%) in the troll fisheries (PSCNBTC 1991, Lynch 2002, pers. comm.). Since the Board of Fisheries action in 1994 prohibiting the sale of net caught steelhead, there is a very limited commercial sale of steelhead taken in the commercial troll fishery. From 1997 until 2002, commercial fishermen in Southeast Alaska sold about 50 steelhead per year (Lynch 2002, pers. comm.). Since then, the number of steelhead sold by trollers has ranged from three to 108 (Kelley 2008, pers. comm.).

Since 2006, the Commissioner of ADF&G has only required mandatory reporting of incidentally net-taken steelhead in the Stikine River Terminal Chinook Salmon commercial fishery. Fourteen were reported during the 2006 fishery and eight were reported during the 2007 fishery (Kelley 2008, pers. comm.).

Effects of the Proposal

Adopting this proposal would add additional restrictions to the Federal subsistence harvest of steelhead in both the POW/Kosciusko and the Southeast Alaska subsistence steelhead fisheries which are described below.

Use of bait, use of handlines, and locations of allowable harvest

Besides removing the use of bait for harvesting steelhead during these fisheries, the proposed language, as written, would prohibit Federally qualified subsistence users from using bait in later subsistence fisheries (e.g., Federal salmon fishery) at times where sport fishers may still use bait. The bait prohibition was removed from regulation to increase harvest efficiency with rod and reel. The use of bait to harvest steelhead by Federally qualified users has been very low. During 2007, only four Federal permits reported using bait during the steelhead fisheries (Forest Service 2008).

The proposed language, as written, would prohibit Federally qualified subsistence users from using handlines for snagging in subsistence fisheries in drainages that have a size restriction for any specie within that drainage. This method is used to selectively harvest fish in small streams where the use of rod and reel is difficult. Reported Federal harvest of steelhead with handlines has been very low and does not pose a conservation concern. Of the historic total of 194 steelhead reported harvested under Federal permits, only three were harvested with handlines.

This proposal would further restrict the Federal subsistence fisheries for steelhead. Identifying where Federally qualified subsistence users may direct harvest, while other steelhead fisheries remain open, does not recognize subsistence uses as a priority over other uses as required in ANILCA. Although the current proposal (Proposal 290) to the State Board of Fish would only allow sport harvest of steelhead at 16 identified drainages, it does not affect catch and release fishing by sport fishers on the drainages where retention would be prohibited. Allowing a catch and release sport fishery where subsistence use is prohibited does not constitute a meaningful priority.

Many fisheries are managed for harvest without knowing the exact number of fish present. Sound management principles do not require that every fish or population of fish be counted before harvest can occur. The present Federal management is commensurate with the level of harvest.

Local Federal managers have delegated authority from the Federal Subsistence Board to specify permit stipulations as needed. Concern over the use of handlines and rod and reel with bait within particular drainages has been addressed by permit stipulations set by the local Federal manager. Permit stipulations have been applied to specific streams of concern to reduce harvest for potential conservation reasons. Escapement estimates, along with ease of access (road accessibility) have been determining factors in identifying streams of concern. When size restrictions have been placed on drainages, bait use and handlines have been prohibited during those particular fisheries.

Harvest of steelhead under Federal permits has been very low in comparison to the sport fishery harvest, and does not seem to be posing a conservation concern for steelhead populations. If Federal harvest increases to the point where a reduction is needed, either in a particular stream or an area, in-season action (e.g., 2006 Cable Creek closure) can be taken to address the situation.

Mandatory fin clipping of subsistence taken steelhead

Requiring Federally qualified subsistence users to fin clip steelhead is an unnecessary restriction. Currently, subsistence users are not required to mark steelhead by fin clipping under either State or Federal regulations. Federal subsistence users must remove the caudal fin of salmon when taken. The primary purpose of marking is to prevent subsistence caught salmon from mixing with commercially taken salmon in the market place. While there is valid law enforcement need to identify subsistence taken salmon to prevent them entering commercial markets, there is no evidence that marking is needed to prevent subsistence taken steelhead from entering the commercial market.

It is also important to be able to determine under what regulations fish are taken. Law enforcement officers can distinguish subsistence users from sport users by simply asking to see a person's Federal permit or State sport fishing license. The Federal subsistence fishing permit identifies Federally qualified subsistence users and must be in their possession during fishing. Any harvest must be recorded before leaving the fishing site. Sport caught steelhead should be easy to identify by law enforcement as State regulations require a steelhead to be a minimum of 36 inches long to retain, limit harvest to one steelhead daily (two annually), and fishers must record the fish immediately upon harvest, in ink, on the back of their sport fishing license. Federal law enforcement has not had any problems distinguishing between subsistence and sport uses, and believes there is not sufficient law enforcement need to support the proposed regulatory change (Bryden 2008, pers. comm.).

OSM CONCLUSION

Oppose Proposal FP09-03.

Justification

The reported harvest from the Federal subsistence steelhead fisheries has been small. Given the low participation and reported harvest in these fisheries, additional conservation-based restrictions are not warranted at this time. Local Federal managers monitor harvest during these fisheries. Using monitoring information, the local Federal managers have the authority to close down these fisheries when and if conservation concerns arise. The present Federal management is commensurate with the level of harvest.

Heavily restricting the Federal subsistence fisheries for steelhead, while other steelhead fisheries remain open, does not recognize subsistence uses as a priority over other uses as required in ANILCA.

The proposal would create unnecessary regulations as local Federal managers have the delegated authority from the Board to manage the Federal subsistence steelhead fisheries by permit stipulations and to take in-season action when necessary. Typical permit stipulations have included reduced harvest limits and/or size restrictions. When size restrictions are implemented, both handlines and the use of bait are prohibited under Federal permit conditions to prevent mortality of undersize steelhead. To date, harvest with these gear types has been very low.

The proposed marking requirement would burden subsistence users, without a demonstrated need. Federal law enforcement has not experienced any problems distinguishing between subsistence and sport uses, and believes there is not sufficient law enforcement need to support the proposed regulatory changes. The Federal subsistence fishing permit identifies Federally qualified subsistence users and must be in their possession during fishing. Any harvest must be recorded before leaving the fishing site. Requiring the fin clipping of subsistence taken steelhead is unnecessary for the identification of steelhead harvest methods.

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Appendix A. Customary and Traditional Use Determinations for Southeast Alaska

Area	Species	Determination
District 1, Section 1E in waters of the Naha River and Roosevelt Lagoon	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City of Saxman.*
District 1, Section 1F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City of Saxman.*
Districts 2, 3, and 5 and waters draining into those districts.	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage.*
District 5, north of a line from Point Barrie to Boulder Point	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.*
District 6 and waters draining into that district	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage; residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.*
District 7 and waters draining into that district	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.*
District 8 and waters draining into that district	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of drainages flowing into Districts 7&8, residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island), and residents of Meyers Chuck.*
District 9, Section 9A	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.*

Appendix A. Continued

Area	Species	Determination
District 9, Section 9B north of the latitude of Swain Point	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor*
District 10 west of a line from Pinta Point to False Point Pybus	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.*
District 12 south of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30' W. Long., including Killisnoo Island.*
District 12, Section 12A excluding the area south of a line from Fishery Point to South Passage Point Section 12B	All fish	*Residents of drainages flowing into Districts 12 and 14.*
District 13, Section 13A south of the latitude of Cape Edward	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City and Borough of Sitka in drainages which empty into Section 13B north of the latitude of Dorothy Narrows.*
District 13, Section 13A excluding the area south of the latitude of Cape Edward.	All fish	*Residents of drainages flowing into Sections 13A, 13B, and District 14.*
District 13, Section 13B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City and Borough of Sitka in drainages which empty into Section 13B north of the latitude of Dorothy Narrows.*
District 13, Section 13C	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City and Borough of Sitka in drainages which empty into Section 13B north of the latitude of Dorothy Narrows.*
District 13, Section 13C east of the longitude of Point Elizabeth	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30' W. Long., including Killisnoo Island.*
District 14, Section 14B and 14C	Salmon, Dolly Varden, trout, smelt, and eulachon	*Residents of the City of Hoonah and in Chichagof Island drainages on the east shore of Point Frederick from Garting Creek to Point Sophie.*

Appendix A. Continued

Area	Species	Determination
Remainder of the Southeastern Alaska Area	Dolly Varden, trout, smelt, and eulachon	*Residents of Southeastern Alaska and Yakutat Areas.*

Appendix B. History of special restrictions in Federal subsistence steelhead fisheries.

2003 Federal Subsistence Fishery – Steelhead – Prince of Wales Island

Regulatory Language:

(iv) You may take steelhead trout on Prince of Wales Island only under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

> *(A) The winter season is December 1 through the last day of February, with a harvest limit of 2 fish per household. You may use only a dip net, spear, or rod and reel with artificial lure or fly. You may not use bait. The winter season may be closed when the harvest level cap of 100 steelhead for Prince of Wales Island has been reached. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.*
>
> *(B) The spring season is March 1 through May 31, with a harvest limit of 5 fish per household. You may use only a dip net, spear, or rod and reel with artificial lure or fly. You may not use bait. The spring season may be closed prior to May 31 if the harvest quota of 600 fish minus the number of steelhead harvested in the winter subsistence steelhead fishery is reached. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.*

Permit Conditions 2003 Spring Season:

21 small road accessible streams were restricted by permit condition as follows: 36 minimum Size limit, 2 fish annual limit, prohibited the use of spears. The streams were: Dog Salmon Creek, Crab Creek, Shaheen Creek, Sal Creek, Flicker Creek, Big Creek, El Cap Creek, Rock Creek, Port Saint Nicholas Creek, Big Ratz Creek, Naukati, Creek, Alder Creek, Red Bay Lake / Creek, 108 Creek, Maybeso Creek, Black Bear Creek, Little Ratz Creek, Yatuk Creek, Buster Creek, Turn Creek, and Exchange Creek.

Permit Conditions 2003/2004 Winter Season:

108 Creek and Dog Salmon Creek were restricted with a minimum size limit of 36 inches, 2 fish annual harvest limit and a prohibition of the use of spears

2004 Federal Subsistence Fishery – Steelhead – Prince of Wales and Kosciusko Islands

Regulatory Language:

Same as 2003, Kosciusko Island was added

Permit Conditions 2004 Spring Season:

Three streams were added to the 2003 list of small streams with the same permit restrictions as in 2003. They were: Cable Creek, Trocadero Creek, and 12 Mile Creek.

Permit Conditions 2004/2005 Winter Season:

No restrictions beyond the regulations above.

2005 Federal Subsistence Fishery – Steelhead – SE Alaska and Prince of Wales/Kosciusko Islands

Regulatory Language:

> *Prince of Wales / Kosciusko Island regulations were the same as 2003. The following regulation was added for the remainder of Southeast Alaska:*
>
> *You may take steelhead under the terms of a subsistence fishing permit. The open season is January 1 through May 31. The daily household harvest and possession limit is one with an annual household limit of two. You may only use a dip net, gaff, handline, spear, or rod and reel. The permit conditions and systems to receive special protection will be determined by the local Federal*
>
> *fisheries manager in consultation with ADF&G*

Permit Conditions 2005/2006 POW Winter Season:

No restrictions beyond the regulations.

2006 Federal Subsistence Fishery – Steelhead – SE Alaska and Prince of Wales / Kosciusko Islands

Regulatory Language:

Same as the regulations for 2005, except that the prohibition on the use of bait was removed

Permit Conditions 2006/2007 POW Spring Season:

Same regulations for 2005, however Big Ratz Creek was removed from small road accessible stream list, and the Harris River was added to the list based on weir data from the 2005 POW steelhead assessment projects.

Permit Conditions 2006/2007 POW Winter Season:

The use of bait was prohibited by permit restriction

2007 Federal Subsistence Fishery – Steelhead – SE Alaska and Prince of Wales / Kosciusko Islands

Regulatory Language:

Same as 2006

Permit Conditions 2007/2008 POW Winter Season:

The use of bait was prohibited by permit restriction in Dog Salmon and 108 Creeks

Summary of harvest permit stipulations for steelhead in Southeastern Alaska, 2005.

Area	Harvest Permit Stipulations				Number of Steelhead Streams With Stipulations
	Harvest Limit	Minimum Size	Methods	Reporting Requirement	
Prince of Wales small road accessible streams (Spring Season)	1 per day 2 per season per household	None	Dipnet, rod/reel, spear, handline	Within 24 hours and end of season	24 (same list as 2004)
Ketchikan and Juneau road systems (all streams)	1 per day 2 per year per household	30 inches	Dipnet, rod/reel	Within 24 hours and end of season	9
Wrangell and Petersburg road systems (all streams)	1 per day 2 per year per household	32 inches	Rod/reel	Within 24 hours and end of season	8
Petersburg Creek	1 per day 2 per year per household	32 inches	Dipnet, rod/reel	Within 24 hours and end of season	1
Sitka road system (all streams)	0	N/A	N/A	N/A	3

Summary of harvest permit stipulations for steelhead in Southeastern Alaska, **2006 and 2007.**

Area	Harvest Limit	Minimum Size	Methods	Reporting Requirement	Number of Steelhead Streams With Additional Stipulations
Prince of Wales small road accessible streams (Spring Season)	1 per day 2 per season per household	None	Dipnet, rod/reel without bait, spear, handline	End of season or within 15 days of taking annual limit	24*
Ketchikan, Juneau, Wrangell and Petersburg road system streams and Petersburg Creek	1 per day 2 per year per household	32 inches	Rod/reel without bait	End of season or within 15 days of taking annual limit	18
Sitka road system (all streams)	1 per day 2 per year per household	36 inches	Rod/reel without bait	End of season or within 15 days of taking annual limit	3

**Big Ratz Creek was removed from the list and Harris River was added to the list based on stock assessments.*

INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-03

The Interagency Staff Committee (ISC) found the staff analysis to be a thorough and accurate evaluation of the proposal, and provides sufficient factual basis for the Regional Council recommendation and Federal Subsistence Board action on the proposal.

The ISC recognizes the importance of sound management approaches for southeast Alaska steelhead populations. The low levels of subsistence effort and harvests (as indicated by permit returns and extensive field surveys) are currently focused on a few systems which are recognized as having numbers of fish sufficient to sustain such uses. Data also demonstrate that concerns about substantial harvest increases from recently approved gear types have not been realized.

Managers have evaluated different approaches to enumerate adult steelhead in the region, and have concluded that there are significant trade-offs in technical complexity, effort, costs, and data accuracy associated with each methodology. Such factors should therefore be considered in any management strategy incorporating stock assessments, collection of data on harvest levels, and evaluations of the effectiveness of site-specific regulations.

We also share ADF&G's interest in ensuring the viability of steelhead found in many small southeast Alaska systems. However, questions arise as to whether these groups of fish in individual streams actually constitute discrete "populations". Available literature from conservation biology indicates that "populations" comprised of 10 or 20 adults would be expected to go extinct, even if harvest mortality was completely absent. This suggests that other mechanisms may be important for maintaining the numbers of steelhead in these systems. Field observations from studies in the region indicate that adult fish appear to move between different watersheds during their spawning migrations. Further research is needed to verify if a meta-population approach to managing these fish across a suite of shared streams—rather than management which is based on the assumption that each stream is occupied solely by a separate and isolated population—may more accurately reflect the ecology of southeast Alaska steelhead.

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-03 Southeast Alaska Steelhead Conservation

Introduction: Southeast Alaska steelhead conservation has continuously arisen as a divisive issue between the Alaska Department of Fish and Game (Department) and the Federal Subsistence Board (Federal Board). While the Department believes that overall Southeast steelhead harvest levels could probably be safely sustained at current levels, it has serious concerns regarding harvests from smaller stocks on unmonitored streams. The Department unwaveringly continues to submit proposals, comments, correspondence, presentations, requests for reconsideration, data, and data request responses with the overall intent of conserving vulnerable steelhead populations in small streams in Southeast Alaska, while allowing some limited harvest on most streams and focusing harvest opportunities onto larger monitored streams with more robust steelhead populations. The Department has submitted or supported proposals advancing selective restriction options, such as minimum length restrictions, harvest limits, seasons, single hook requirements, limited stream closures, and prohibitions on use of bait, which are similar to those found in State of Alaska (state) regulations to provide for the conservation of these small stocks. Some streams may consist of populations of 10 or fewer fish which could be decimated by fishing under federal regulations with highly efficient gear types and less restrictive harvest limits. The Department believes that the meaningful priority for subsistence use of steelhead should be provided by mirroring protective state regulations on smaller unmonitored streams[1] and by providing enhanced harvest opportunity greater than that allowed under state regulations only on larger monitored streams.

The Department has continually expressed concern to the Federal Board regarding the importance of conservative regulations for the steelhead fisheries in Southeast Alaska, and particularly for those fisheries in small unmonitored streams. The Department has exhausted all administrative and procedural processes to install conservation-based regulations allowing limited harvest of steelhead with lower efficiency gear in the federal subsistence fisheries. Due to continuously expansive federal subsistence harvest provisions,[2] the Department has been forced to submit a more restrictive conservation-based set of regulations disallowing steelhead retention to the Alaska Board of Fisheries and the Federal Board. Regulations this restrictive would be unnecessary, and some additional harvest could be allowed, if the Federal Board mirrored more stringent state regulations on smaller streams. Because the Federal Board has not done so, these more restrictive retention closures are needed in order to protect small stocks

[1] Even a regulation that is an exact duplicate of a state regulation provides a subsistence priority, because in times of shortage non-federal users are restricted first.

[2] Although federal officials are currently attaching bait and size limits to some permits, these permit restrictions are less enforceable than regulatory restrictions. Other members of the public may not be aware of permit restrictions and are less likely to report potential violations than where restrictions are explicitly spelled out by regulation. Similarly, some individuals may believe that, because harvest is allowed by regulation, failure to obtain a permit is simply a "paper violation" without real conservation impacts. They may choose to ignore the permit provision and thus avoid the substantive limits imposed through permits unless they have the unlikely misfortune of being contacted by an enforcement officer in the field.

exposed to the more efficient methods and means and higher harvest limits approved by the Federal Board.

This conservation-based proposal essentially mirrors and complements the restrictive proposal (#290) submitted to the Alaska Board of Fisheries for the February 17-26, 2009, meeting. This proposal would modify federal subsistence regulations regarding steelhead trout harvest in freshwaters on federal public land in Southeast Alaska. It would help ensure conservation of steelhead trout stocks in small unmonitored streams throughout Southeast Alaska. These proposed modifications to the federal regulations, which have not been directly considered before, are necessary to address the state's conservation concerns with existing federal harvest limits and methods and means. The proposed provisions include:

- Restricting harvest of steelhead to designated systems and seasons.
- Allowing harvest of steelhead only from streams that contain harvestable surpluses as determined by the Department, e.g., by monitoring or surveys.[3]
- Prohibiting use of bait in all freshwaters where steelhead may be present from November 16 through September 14, except in designated systems and seasons where retention of steelhead is authorized.
- Restricting use of bait in the designated systems and seasons when a daily, seasonal, or annual limit of steelhead trout has been harvested by a subsistence user.[4]
- Prohibiting snagging where a size limit applies to a species present in the area.
- Prohibiting possession of subsistence and sport-harvested steelhead on the same day.
- Prohibiting accumulation of federal and state sport fishing harvest limits for steelhead.

If the Federal Board does not enact one or more of the above conservation measures previously recommended by the Department, then unnecessary impacts on other uses will occur. This would be contrary to the intent and spirit of ANILCA §815. The Alaska Board of Fisheries may conclude it has no choice but to protect steelhead by closing most freshwaters of Southeast Alaska to all retention of steelhead, and, if subsistence harvest of steelhead continues to grow, perhaps to other fishing, to protect steelhead stocks.[5] Adoption of this proposal is not the ideal

[3] According to the Department, 16 streams currently meet this level of harvestable surplus.

[4] As explained later in these Comments, prohibition of bait is already a standard stipulation under certain circumstances in many Southeast federal permits, so enacting a regulation to the same effect should have little to no impact on law-abiding users. Restrictions on use of bait are particularly important where release of fish may be required, because use of bait raises steelhead hooking mortality as high as 10 percent, whereas the average hooking mortality is 2-3 percent without bait.

[5] Once a non-retention provision is adopted, the only tool available to the Board of Fisheries for improving steelhead survival may be complete closure of other freshwater fisheries where steelhead may be present in order to eliminate incidental mortality associated with nonretention. Even complete closure, however, might have minimal benefits for steelhead stocks. Hooking mortality is most likely in the range of 2-3 percent when bait is not used – (mortality figures presented in the federal staff analyses are inaccurate). Causing the State to close all sport fishing would be inconsistent with balancing ANILCA's competing goals, such as recreation and sport fishing. The Ninth Circuit Court recognized that balance is an important permissible consideration in *Ninilchik Traditional Council v. United States*, 227 F.3d 1186, 1192 (9th Cir.). It would be incongruous to close all sport fishing within state, private, and national forest lands in order to address conservation issues created by the current federal subsistence harvest provisions for a subsistence harvest that has been minimal to date but threatens sustainability of small stocks.

solution, but if the Federal Board continues to allow higher harvest limits and more efficient methods and means in its general regulations, this proposal will be necessary to provide for conservation of small steelhead stocks.

Impacts to Subsistence Users: The 2007 federal staff analysis to the Southeast Regional Advisory Council (pp. 126-127) and Federal Board reported only 100 steelhead were harvested under federal subsistence permits in the past three years. Although this number is not high, the actual recent numbers of steelhead taken may be higher because a recent study indicates that permit and reporting compliance rates are low (Turek 2005). On the other hand, if the federal subsistence harvest of steelhead is in fact low, adoption of this proposal should have no significant impact on subsistence.

If this proposal is adopted, the federal subsistence steelhead fishery in Southeast Alaska will continue to provide a meaningful preference for subsistence use of steelhead, but the harvest effort will be focused on monitored or surveyed streams where permit conditions could be developed to prevent overharvest. If this proposal is adopted, the use of bait may be reduced in some streams in order to protect both juvenile and adult steelhead trout, but should not significantly impact subsistence harvests.

Opportunity Provided by State: Steelhead trout, where taken incidentally by gear operated under terms of a state subsistence permit or combined subsistence/personal use permit for salmon, may be legally harvested and possessed. Reported incidental harvest from Southeast Alaska personal use and subsistence fisheries from 2003-2007 was a total of seven fish. The holder of a state subsistence salmon permit must report any steelhead incidentally taken in this manner on his or her permit calendar. The State has a comprehensive package of sport, personal use, commercial, and subsistence regulations that work together to conserve steelhead and provide a limited opportunity for subsistence harvest and use. These include a length restriction of 36” or more, which is 2% to 3% of the steelhead stocks in most Southeast systems and up to 5% of the steelhead in the larger Situk system. The 36” length restriction is especially effective when applied to smaller systems, which tend to produce smaller steelhead. In some small Southeast systems, less than 1% of the steelhead may reach 36” or more. Additional restrictions are bait and snagging prohibitions in the sport fishery, and restrictions on harvest in net fisheries that reduce bycatch of steelhead (including prohibitions on the sale of steelhead captured in net fisheries).

A state subsistence fishery for steelhead in the Situk River was established in 1988 by the Alaska Board of Fisheries (5 AAC 01.680 (d)). One state subsistence permit was issued in the last 20 years for the Situk River, and that permit was not fished. Although this state steelhead subsistence fishery allows directed harvest of steelhead, the Situk River is among the best understood and studied steelhead rivers in Alaska. The Situk River is an excellent example of a monitored steelhead stock which will continue to allow harvest of steelhead under proposed regulatory changes submitted to the Alaska Board of Fisheries and the Federal Board as long as continued monitoring evidences a harvestable surplus is available.

Conservation Issues: Current federal subsistence regulations and permit conditions are not conservative enough to ensure conservation of steelhead trout stocks in Southeast Alaska

freshwater systems, especially the "smaller" (<100 annual escapement), easily accessed systems that may receive intensive pressure. Steelhead fisheries with less conservative regulations than current regional sport fishery steelhead regulations may not be sustainable. The only active steelhead monitoring program in Southeast Alaska occurs annually on 16 systems, and the necessary information required to evaluate increased subsistence harvest levels is simply not available. To compensate for potential cumulative overexploitation of steelhead stocks, the Department submitted proposal number 290 to the Alaska Board of Fisheries to severely restrict the sport fishery on all unmonitored steelhead stocks. Proposal 290 (Attachment 1), which would close all but 16 systems in Southeast Alaska to steelhead retention, will be considered by the Alaska Board of Fisheries at its February 2009 meeting.

Declines in steelhead population were evident in Southeast Alaska prior to 1994 under the sport fishing regulations then in effect, which were similar to current federal subsistence regulations. In 1994, the Alaska Board of Fisheries enacted more conservative regulations for steelhead in Southeast Alaska, and these more restrictive regulations have successfully contributed to reversing the decline in steelhead populations observed in the late 1980s and early 1990s.

Most steelhead populations in Southeast Alaska receive an annual escapement of 200 or fewer fish, with only a handful of systems regularly receiving escapements over 500. Nearly all Southeast Alaska steelhead stocks are difficult or impossible to assess accurately or monitor on a regular basis. Without basic specific stock status information available, the steelhead stocks in Southeast Alaska need to be managed conservatively and may only be sustained with very low harvest rates of 10 percent or less. History has shown that levels of harvest <u>opportunity</u> provided by the federal subsistence regulations cannot be sustained in absence of an intensive stock assessment program.

In the absence of restrictive methods and means provisions and harvest limitations similar to those provided in state regulations, federal subsistence harvest of steelhead trout should only be authorized in waters with an active stock assessment program or a documented annual escapement large enough to withstand an increase in harvest. Federal authorization to allow the use of bait for subsistence steelhead users and required retention of steelhead caught with bait effectively eliminates any minimum size limit and does not protect steelhead smolt as they emigrate to saltwater. State regulations protect nearly all steelhead smolt under the no-bait and minimum size limit (11 inches) regulations. Federal officials are currently attaching stipulations to permits matching state regulations concerning size limits and prohibiting bait use for the streams crossing the Sitka road system. Federal officials currently prohibit the use of bait where a minimum size limit is established by federal permit stipulation. Other Southeast Alaska road systems that are crossed by streams with steelhead have minimum size limits, though not as conservative as in State regulations, and bait prohibitions. Little impact to federal users would result from changing the regulation to mirror existing bait and size restrictions along the Southeast Alaska road system federal subsistence steelhead fisheries. On the other hand, there are some small systems on Prince of Wales Island that do not have any size limitations attached to the permit. This illustrates the State's concern that the federal designated official for these systems, for example, is not taking a conservative enough approach to protect these small accessible steelhead fisheries. If these restrictions were in regulation rather than dependent on

the discretion of area officials to apply as stipulations on permits, the State's concern for conservation of these small systems would be reduced.

As previously discussed, permit conditions establish less of a community standard for compliance than do regulatory standards. The existing federal regulations are inconsistent with the sound management of these discrete steelhead stocks and will likely result in unnecessary restrictions on other uses. Adoption of this proposal would provide for necessary conservation, would still provide a meaningful subsistence priority, and would prevent unnecessary restrictions on other users.

The Department urges the Federal Board to respect the Department's concerns for stock conservation. Federal subsistence limits and regulations are creating the potential for unnecessarily impacting the sustainability of distinct Southeast steelhead stocks. Stock assessment and the acquisition of reliable stock status data for numerous small steelhead stocks are necessary before continuing to authorize an expanded federal subsistence take of these unique fish in Southeast Alaska under federal fishing and harvest regulations.

Due to the continuation of the federal take provisions, the Department has been forced to present a more restrictive conservation-based set of regulations to the Alaska Board of Fisheries and the Federal Board. Although less restrictive alternatives are preferable and some additional harvest could be allowed if the Federal Board mirrored more restrictive state regulations on smaller streams, absent that response from the Federal Board, more restrictive provisions including closures to retention are needed to protect small stocks.

Enforcement issues: Enforcement issues often create conservation issues, and there remains a question whether the federal permit system reflects actual participation and harvest of steelhead throughout Southeast Alaska. Low numbers of permits issued may reflect a lack of compliance with the requirement to have a permit and taking fish outside permit stipulations. Data from recent studies indicate that not all subsistence users are obtaining permits (Turek 2005), so permit stipulations may not be effective even if well-designed. Some fishers who may ignore permit provisions may be more likely to comply with regulatory harvest limits and restriction requirements on methods and means.

Jurisdiction Issues: Many streams in Southeast Alaska that support steelhead flow through nonfederal land. The State disputes many of the federal reserved water right claims in Southeast Alaska and the application of federal subsistence regulations in numerous streams and rivers that are not within federal lands. Detailed maps are needed of lands where federal jurisdiction is claimed and the federal basis for each of these claims should be explained. In addition, fishers need to be provided copies of these detailed maps to help ensure they are not cited for standing on State or private lands while using federal methods and means.

Recommendation: Support. The Departm ent would also consider supporting less restrictive alternatives, previously rejected by the Federal Bo ard, that address the concerns resulting in this proposal and provide for the conservation of small steelhead stocks.

WRITTEN PUBLIC COMMENTS

Oppose. This proposal attempts to do several things at once. Most of the changes are improvements or changes of little consequence, however, I find the proposed change to section (iv)(A) to be unnecessarily restrictive and potentially dangerous to the resource. Restricting steelhead harvest to only streams with "adequate monitoring or surveys" will have several adverse consequences. First off, such monitoring takes staff time and money. As regulatory agencies see their budgets squeezed, these efforts will be reduced and harvest opportunities eliminated for political and financial, rather than biological reasons. Secondly, publishing a list of streams open to harvest will necessarily promote fishing and thus increase harvest in these locations. This increased publicity could ironically result in the over-harvest that this proposal is trying to avoid. Currently, different fishermen access different streams at different times of year. No single fisherman is allowed to harvest more than two fish a year under the current restrictive bag limit. Hence, current harvest is spread thinly over many streams. These runs are numerous. Most of them are small but healthy populations capable of sustaining a very limited (but greater than zero) harvest. Focusing all of the regional harvest on a handful of streams is moving the wrong direction as there are very few systems that product large numbers of steelhead.

Rather than a list of streams open to steelhead harvest, the regulations should individually list streams that are closed to harvesting, thus eliminating the problem of promoting harvest in specific drainages. If current reporting requirements are not sufficient for the fisheries managers to identity populations that are being harvested at high levels, the reporting requirements should be changed to accomplishing this. Streams with relatively heavy steelhead harvest could be candidates for the imposition of a reasonable size limit (accompanied by a ban on bait) that would ensure than a substantial fraction of the run was protected, while allowing some larger, older fish (which presumable have spawned at least once already, thus maintaining genetic diversity) to be harvested.

Submitted by Tad Fujioka, Sitka

Support. Kenai River Sportfishing Association supports this proposal as a means to blend the subsistence preference among qualified users with the realities of managing small fragile stocks of steelhead where the budget and infrastructure does not exist to allow for comprehensive monitoring.

Steelhead in Southeast Alaska are conservatively managed by the State in response to a lack of technical information concerning steelhead life history and sustainability. Very conservative catch and release regulations are in place as a means to afford protection for many small and fragile steelhead stocks. Some steelhead streams sustain only minimal numbers (less than 10 spawning pairs) of fish.

It is our understanding that this regulation change will ensure the conservation of steelhead trout stocks in Southeast Alaska and it will compliment anticipated changes in State regulations (being submitted the Alaska Board of Fisheries) to ensure sustainable management of Southeast steelhead stocks.

The change, while intended to be a conservation tool, will continue to provide a meaningful preference for subsistence use of steelhead, by allowing a harvest opportunity on streams where a monitoring program exist and where permit conditions adequate to prevent over harvest can be implemented.

Submitted by Kenai River Sportfishing Association

FP09-15 Executive Summary			
General Description	Proposal FP09-15 requests that a "no Federal subsistence priority" customary and traditional use determination be made for all fish in the Juneau road system area (all waters crossed by or adjacent to roads connected to the City and Borough of the Juneau road system). *Submitted by the Alaska Department of Fish and Game*		
Proposed Regulation	**Southeastern Alaska Area—All fish—Customary and traditional use determinations**		
	Remainder of the Southeastern Alaska Area	*Dolly Varden, trout, smelt, and eulachon*	*Residents of Southeastern Alaska and Yakutat areas.*
	Remainder of the Southeastern Alaska Area	*All other fish*	*No determination—all rural Alaska residents*
	District 11—Juneau Road System Area. (All waters crossed by roads connected to the City and Borough of the Juneau road system.)	***All fish***	***No Federal subsistence priority***
	District 15—Juneau Road System Area. (All waters crossed by roads connected to the City and Borough of the Juneau road system).	***All fish***	***No Federal subsistence priority***
Southeast Regional Council Recommendation	**Oppose**		
Interagency Staff Committee Comments	See comments following the analysis.		
ADF&G Comments	**Support**		
Written Public Comments	**None**		

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-15

SOUTHEAST REGIONAL ADVISORY COUNCIL

Oppose Proposal FP09-15**.** The Council determined that subsistence fishing in the Juneau area waters was appropriate and would not result in a conservation concern for any species. The proposal would not affect non-subsistence users but would be potentially detrimental to subsistence users. There was no evidence presented that a conservation concern currently exists or would potentially exist in the future.

Title VIII specifies the taking on public lands of fish and wildlife for non-wasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. There is a continuing sport fishery on streams adjacent to the Juneau road system.

If this proposal was adopted, continued road construction in the Juneau area would increase the area closed to subsistence without action by the Council. The narrow interpretation of the eight criteria as described by the State is not valid. The Council interprets the regulations more broadly and agrees that there is sufficient evidence to support the continued customary and traditional use of this area by rural residents.

STAFF ANALYSIS
FP09-15

ISSUES

Proposal FP09-15, submitted by the Alaska Department of Fish and Game (ADF&G), requests that a "no Federal subsistence priority" customary and traditional use determination be made for all fish in the Juneau road system area (all waters crossed by or adjacent to roads connected to the City and Borough of the Juneau road system).

A companion proposal (FP09-04) requests that no Federal subsistence fishing permits be issued for any streams flowing across or adjacent to the road systems within the City and Borough boundary of Juneau.

DISCUSSION

Proposal FP09-15 is similar to FP08-04, also submitted by ADF&G. The proponent noted that the previous request for a "no Federal subsistence priority" determination for the Juneau road system area was rejected by the Federal Subsistence Board (Board). The proponent submitted FP09-15 because, in the proponent's view, the Board did not evaluate the eight factors describing customary and traditional use for each fish stock used by specific rural communities.

The Juneau road system is within fishing Districts 11 and 15 (**Map 1**). Currently, all rural residents of Southeastern Alaska and Yakutat areas have a positive customary and traditional use determination for Dolly Varden, trout, smelt, and eulachon for Districts 11 and 15. No determination has been made for salmon in Districts 11 and 15; therefore, all rural residents of Alaska may harvest salmon using Federal subsistence regulations.

The populated area of the Juneau road system is designated as nonrural under the Federal Subsistence Management Program[1]. As a result, Juneau residents are not eligible to harvest fish and wildlife under Federal subsistence regulations. The proponent is concerned that fish stocks in Juneau area streams will be adversely impacted by a Federal subsistence fishery open to Federally qualified rural residents on the Juneau road system.

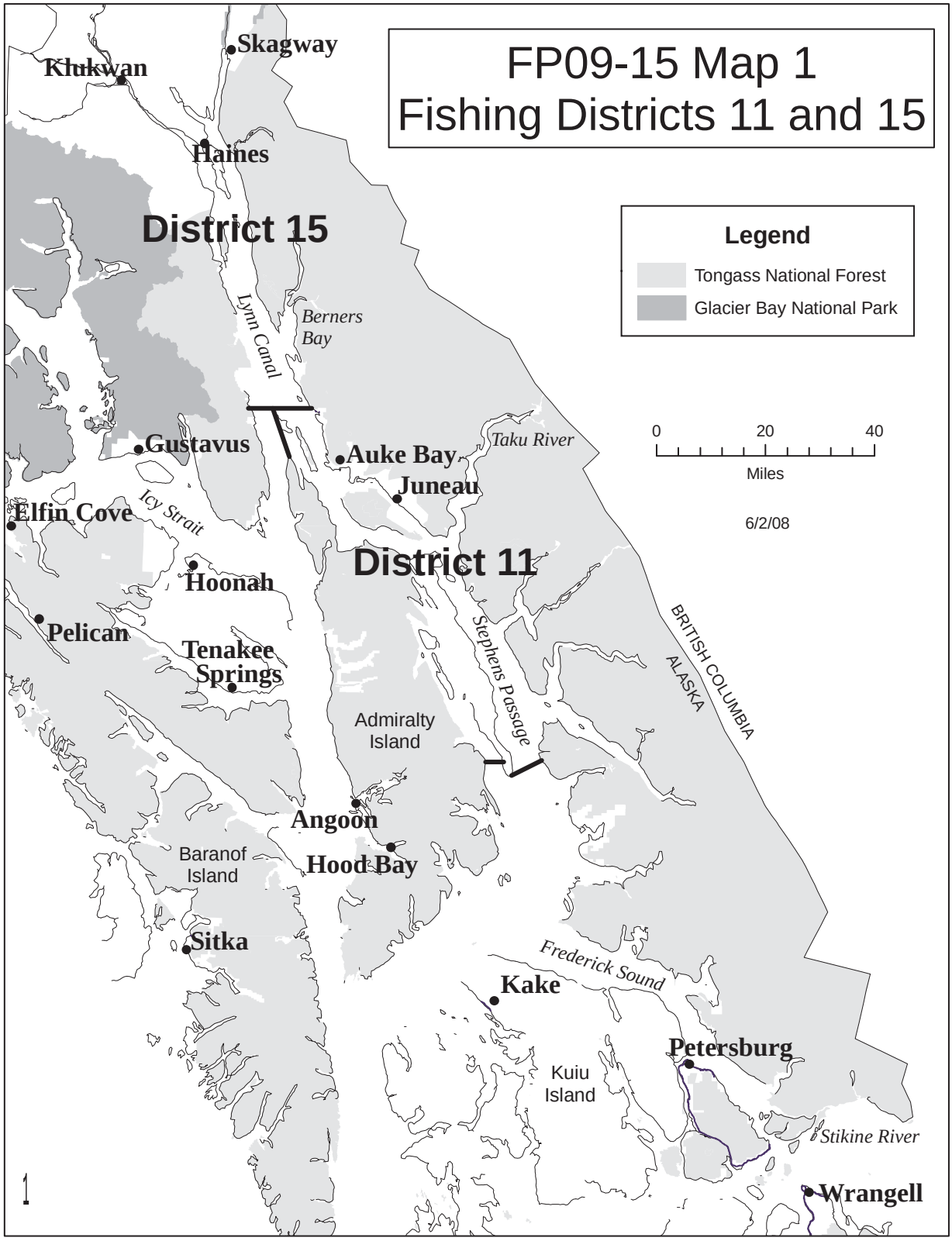
Existing Federal Regulation

Southeastern Alaska Area—All fish—Customary and traditional use determinations*

Remainder of the Southeastern Alaska Area	*Dolly Varden, trout, smelt, and eulachon*	*Residents of Southeastern Alaska and Yakutat areas.*
Remainder of the Southeastern Alaska Area	*All other fish*	*No determination—all rural Alaska residents*

Notes: ***The proposal book did not list all of the customary and traditional use determinations for the "Remainder of the Southeastern Alaska Area," thus they are listed here.

[1] The Juneau nonrural area includes the communities of Douglas and Auke Bay. However, the nonrural area does not extend the entire length of the road north of Juneau.


FP09-15 Map 1
Fishing Districts 11 and 15
Legend
Tongass National Forest
Glacier Bay National Park
0
20
40
Miles
6/2/08
Skagway
Klukwan
Haines
District 15
Lynn Canal
Berners Bay
Gustavus
Auke Bay
Taku River
Juneau
Elfin Cove
Icy Strait
District 11
Hoonah
Pelican
Tenakee Springs
Stephens Passage
BRITISH COLUMBIA
ALASKA
Admiralty Island
Angoon
Baranof Island
Hood Bay
Sitka
Frederick Sound
Kake
Petersburg
Kuiu Island
Stikine River
Wrangell
1

Proposed Federal Regulation

Southeastern Alaska Area—All fish—Customary and traditional use determinations		
Remainder of the Southeastern Alaska Area	*Dolly Varden, trout, smelt, and eulachon*	*Residents of Southeastern Alaska and Yakutat areas.*
Remainder of the Southeastern Alaska Area	*All other fish*	*No determination—all rural Alaska residents*
District 11—Juneau Road System Area. (All waters crossed by roads connected to the City and Borough of the Juneau road system.)	***All fish***	***No Federal subsistence priority***
District 15—Juneau Road System Area. (All waters crossed by roads connected to the City and Borough of the Juneau road system).	***All fish***	***No Federal subsistence priority***

Extent of Federal Public Waters

All fresh waters on the Juneau road system are within the exterior boundaries of the Tongass National Forest and are considered Federal public waters for the purposes of Federal subsistence fisheries management. For purposes of this discussion, the phrase "Federal public waters" is defined as those waters described under 50 CFR 100.3.

Background

When the Board makes a customary and traditional use determination, the uses of the resource in the area are described and analyzed. In this case, the specific locale raised as a concern by the proponent is the Juneau road system, an area situated within fishing Districts 11 and 15 (**Map 1**). The Juneau road system is estimated to be less than 10% of the area of these fishing districts. Fishing districts are the typical geographic descriptor for which the Board makes determinations in the Southeastern Alaska Area (36 CFR 242.24(a) (2) and 50 CFR 100.24(a) (2)).

Regulatory History

In the late 1980s the State of Alaska Joint Board of Fisheries and Game made customary and traditional use determinations that applied to individual communities and specific fish species in particular geographic areas. At that time, 12 Southeast Alaska communities—Angoon, Craig, Haines, Hoonah, Hydaburg, Kake, Kasaan, Klawock, Klukwan, Saxman, Sitka, and Yakutat—were recognized as having a customary and traditional pattern of use of various fish species in Southeast Alaska. The Joint Board did not make positive determinations for 17 other rural communities: Coffman Cove, Edna Bay, Elfin Cove, Gustavus, Hollis, Hyder, Meyers Chuck, Pelican, Petersburg, Point Baker, Port Alexander, Port Protection, Skagway, Tenakee Springs, Thorne Bay, Whale Pass, and Wrangell, or for any residents of the region living outside the boundaries of any organized community.

In 1999, the Board adopted the State's customary and traditional use determinations for fish but modified them to include, at the request of the Southeast Alaska Subsistence Regional Advisory Council (Council), all species of salmon (FSB 2000a:13). As a consequence, customary and traditional use determinations for specific species of fish were adopted in all or portions of Districts 1, 2, 3, 5, 9, 10, 12, 13, and 14, but no specific determinations were made for Districts 4, 6, 7, 8, 11, and 15—the remainder area. Therefore, all

rural residents of Alaska are eligible to harvest fish under Federal subsistence regulations in the remainder area.

In 2000, Proposal FP01-22 requested that the customary and traditional use determination for cutthroat trout, rainbow trout, and Dolly Varden be extended to include all rural residents of Southeast Alaska, for the entire Southeastern Alaska Area geographically—as well as changes to methods, seasons, and harvest limits for these species. The Council recommended expanding the requested determination to include trout, Dolly Varden, smelt and eulachon. The Council also recommended expanding the requested determination to include all of Southeast Alaska[2] geographically (SERAC 2000:178).[3] The Board expanded the customary and traditional use determination to include trout, Dolly Varden, smelt, and eulachon, but only to "the *remainder* area" of the Southeastern Alaska Area (FSB 2000b:4–15). "Retention of the existing customary and traditional use determinations would maintain opportunity for eligible subsistence users while the addition of the remainder area would recognize the uses of other eligible subsistence users until a review of existing information could be conducted to further refine the relationships between communities or areas and their uses of fish" (FSB 2000a:7, cf. 2000b:4–15). Review of the Council and Board transcripts and Council recommendations indicate that the Council consciously did not exclude the Federal public waters of the Juneau road system in the remainder area of the Southeastern Alaska Area.

Salmon/trout permits have been in place since 2002 and steelhead permits were established in 2005. Permit conditions address conservation concerns and provide for a subsistence priority for Federally qualified subsistence users. The fishery is monitored and management issues have been addressed by permit conditions such as increased minimum size limits and restricted methods and means. The conditions of permits in systems to receive special protection are determined by the local Federal fisheries manager in consultation with ADF&G (§____.27(i)(13)(xx)(A)) (SERAC 2005:290). To date, no fish have been reported harvested from the Juneau road system in the Federal subsistence harvest database (Larson 2008, pers. comm.).

The Board has chosen not to recognize customary and traditional use determinations for fish in any new subareas within fishing districts for Southeast Alaska. The Council also has chosen to support broad customary and traditional use determinations because rural residents often participate in subsistence while engaging in commercial activities throughout Southeast Alaska.

In 2005, Proposal FP06-31 was submitted to remove the current area-wide Federal subsistence fishing regulations for steelhead, cutthroat trout, and Dolly Varden in streams on or adjacent to the Juneau road system and replace them with State of Alaska sport fishing regulations. The stated impetus for the proposal was conservation concerns (SERAC 2005:304). At its January 2006 meeting, the Board rejected the proposal.

In 2007, Proposal FP08-04 was submitted by ADF&G requesting that a "no Federal subsistence priority" determination be made for customary and traditional use of fish for the Juneau road system area. This is the same request being analyzed here in FP09-15. The proponent is concerned that fish stocks in Juneau area streams could be impacted if even a few Federally qualified rural residents choose to travel to Juneau and subsistence fish on the Juneau road system (FSB 2007a:175). The Council stated that there was "no information presented that indicated that subsistence fishing in the Juneau area waters was inappropriate. . . . No need was seen to make a location-specific customary and traditional use determination for the

[2] The Southeastern Alaska Area is part of the Southeast Alaska region.

[3] The Board meeting book was in error regarding the Council's recommendation (FSB 2000a:5-6).

Juneau road system" (FSB 2007a:174). At its December 2007 meeting, the Board agreed with the Council and rejected the proposal.

Community Characteristics

Subsistence studies indicate subsistence harvests of fish in Districts 11 and 15 by residents of Skagway, Klukwan, Haines, Tenakee Springs, Petersburg, and Wrangell (**Table 1**, **Map 2,** and **Map 3**). Summaries of these communities' harvests of fish are presented in **Table 2** and **Table 3.** Although use is likely, these studies do not indicate subsistence harvests of fish by residents of the nearby communities of Hoonah, Gustavus, Excursion Inlet, and Angoon in Districts 11 or 15.

Table 1. Population of selected Southeast Alaska communities (2006 population, ADOL 2007; Origin, USDA 1997; and 2000 population, USDC 2007a).

Community	Origin	2000 Population	2006 Population
Skagway City	Traditional Tlingit	862	854
Klukwan CDP[1]	Traditional Tlingit	139	112
Haines Borough[2]	Traditional Tlingit	2,392	2,241
Tenakee Springs City	Settled in 1916	104	109
Juneau City and Borough	Settled in 1880	30,711	30,650
Petersburg City	Settled in 1899	3,224	3,129
Wrangell City	Traditional Tlingit	2,308	1,911

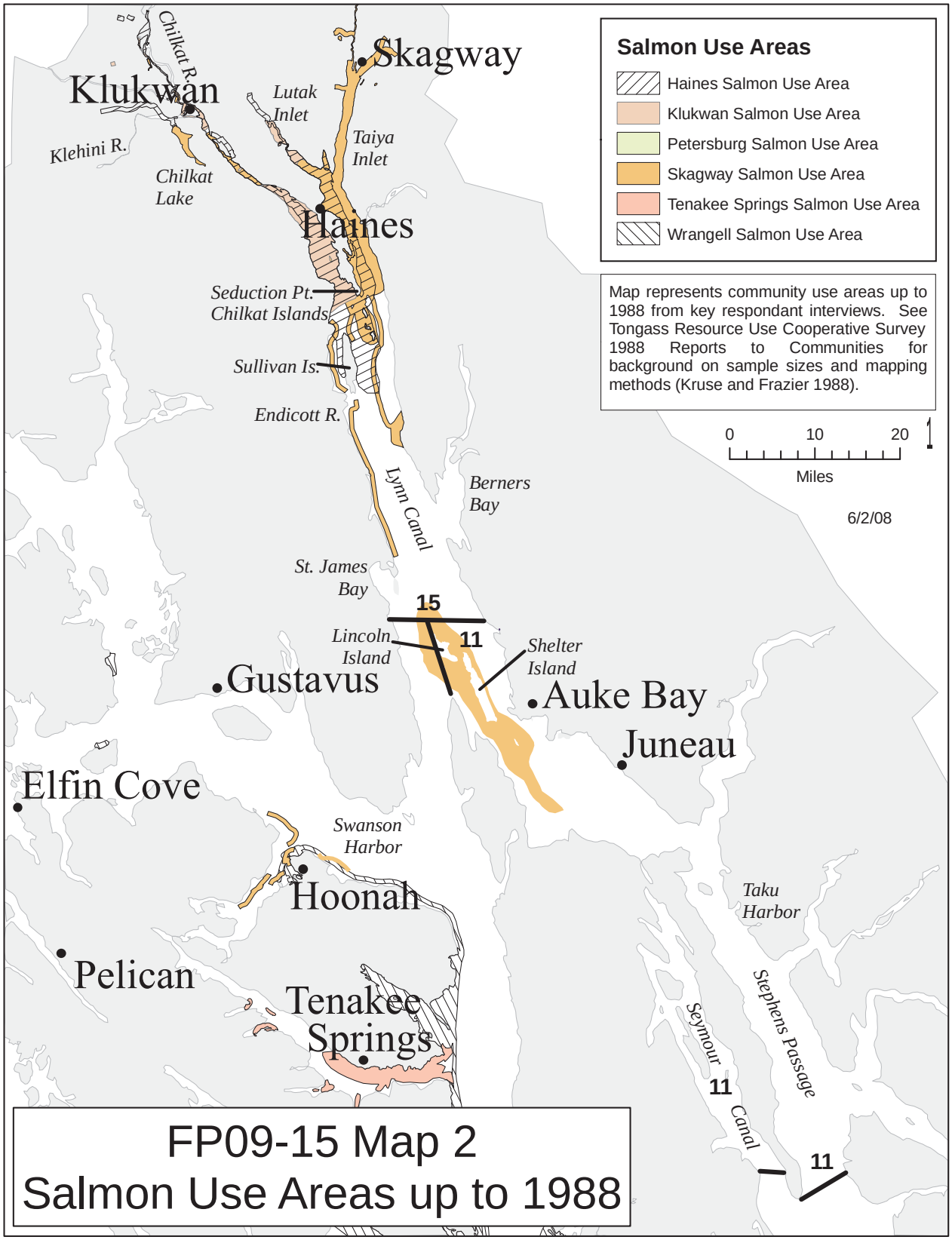
[1] CDP = Census Designated Place. The U.S. Census Bureau creates CDPs as counterparts of incorporated places. The boundaries of a CDP usually follow visible features or the boundary of an adjacent incorporated place.

[2] The City of Haines dissolved in October 2003 in favor of a boroughwide government.

Brief History of the Region

The areas around each community in the region were originally occupied by Tlingit, either in established villages, semi-permanent villages, or seasonal camps (**Map 4**). In the eighteenth century, Russian explorers and colonizers entered Alaska from the west establishing settlements in the Aleutian and Kodiak Islands. The first Russian settlement in Southeast was the outpost at Yakutat in 1795, followed by the major settlement at Sitka in 1799 (Schroeder and Kookesh 1988:15). Attracted by the sea otter trade, Russians had limited influence on the Tlingit largely because they were unable to conquer them outside of Sitka (Schroeder and Kookesh 1988:15). Sea otters were reaching depletion at the time of the sale of Alaska to the U.S. in 1867 (George and Bosworth 1988:15).

Other settlers began arriving in the region for the purposes of mining, missionary work, and whaling (George and Bosworth 1988:15). When gold was discovered in the Klondike, Yukon Territory, in the 1890s, Skagway was at a major route into the Interior and the gold fields. Settlers began arriving in large numbers beginning in the 1880s with the establishment of salmon canneries in Southeast Alaska. The commercial salmon fishing industry continues to be the economic mainstay of the regional economy. When a salmon cannery was constructed, people from established communities often stayed at sites near canneries seasonally in temporary structures, some of which became permanent communities (Smythe 1988:21). Communities also came together around established schools. Fox farming added to the economy beginning in the 1920s and continued into the 1940s, when demand dropped off after Word War II (Smythe 1988:26). Large scale logging began in the 1960s (Smythe 1988:21).


Salmon Use Areas
Haines Salmon Use Area
Klukwan Salmon Use Area
Petersburg Salmon Use Area
Skagway Salmon Use Area
Tenakee Springs Salmon Use Area
Wrangell Salmon Use Area
Map represents community use areas up to 1988 from key respondant interviews. See Tongass Resource Use Cooperative Survey 1988 Reports to Communities for background on sample sizes and mapping methods (Kruse and Frazier 1988).
0 10 20
Miles
6/2/08
Skagway
Klukwan
Haines
Gustavus
Auke Bay
Juneau
Elfin Cove
Hoonah
Pelican
Tenakee Springs
Chilkat R.
Lutak Inlet
Taiya Inlet
Klehini R.
Chilkat Lake
Seduction Pt.
Chilkat Islands
Sullivan Is.
Endicott R.
Lynn Canal
Berners Bay
St. James Bay
Lincoln Island
Shelter Island
Swanson Harbor
Taku Harbor
Stephens Passage
Seymour Canal
15
11
11
11
FP09-15 Map 2
Salmon Use Areas up to 1988

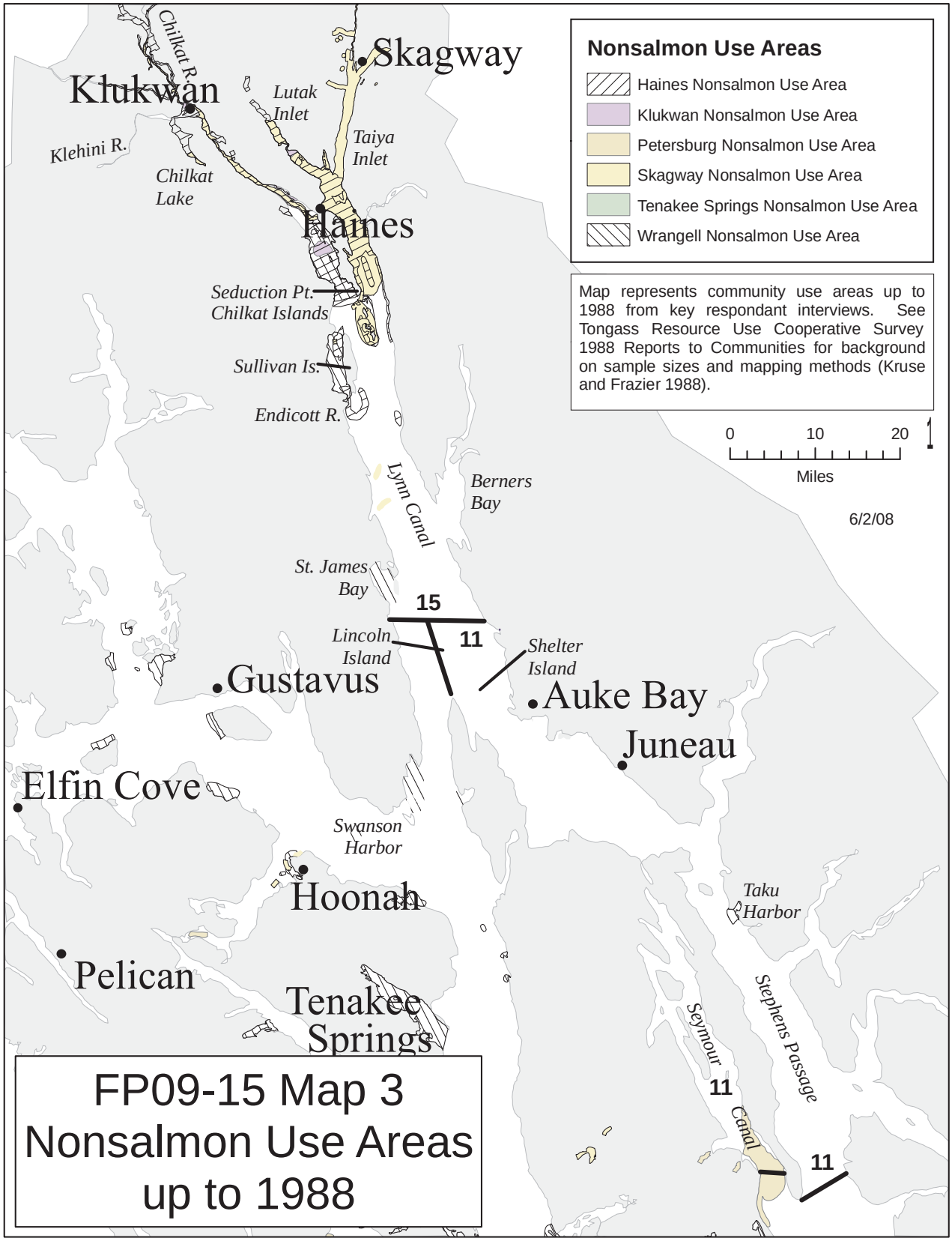

Nonsalmon Use Areas
Haines Nonsalmon Use Area
Klukwan Nonsalmon Use Area
Petersburg Nonsalmon Use Area
Skagway Nonsalmon Use Area
Tenakee Springs Nonsalmon Use Area
Wrangell Nonsalmon Use Area
Map represents community use areas up to 1988 from key respondant interviews. See Tongass Resource Use Cooperative Survey 1988 Reports to Communities for background on sample sizes and mapping methods (Kruse and Frazier 1988).
0 10 20
Miles
6/2/08
Skagway
Klukwan
Chilkat R.
Lutak Inlet
Taiya Inlet
Klehini R.
Chilkat Lake
Haines
Seduction Pt.
Chilkat Islands
Sullivan Is.
Endicott R.
Lynn Canal
Berners Bay
St. James Bay
15
11
Lincoln Island
Shelter Island
Gustavus
Auke Bay
Juneau
Elfin Cove
Swanson Harbor
Hoonah
Taku Harbor
Pelican
Tenakee Springs
Seymour Canal
Stephens Passage
11
11
FP09-15 Map 3
Nonsalmon Use Areas
up to 1988

Table 2. The estimated harvest of salmon for home use, by community, most recent harvest surveys (ADF&G 2007; Paige 2002).

	Estimated Total					
Species	Number	Pounds	Per Household Number	Per Person Number	Per Household Pounds	Per Person Pounds
Skagway 1987 (N=296)						
Salmon	2,011	10,291	9.9	3.5	50.5	17.7
Chum Salmon	333	2,063	1.6	0.6	10.1	3.5
Coho Salmon	282	2,168	1.4	0.5	10.6	3.7
Chinook Salmon	187	2,866	0.9	0.3	14.1	4.9
Pink Salmon	955	2,100	4.7	1.6	10.3	3.6
Sockeye Salmon	254	1,094	1.3	0.4	5.4	1.9
Klukwan 1996 (N=32)						
Salmon	5,460	29,715	151.7	50.6	825.4	275.1
Chum Salmon	1,008	6,975	28.0	9.3	193.8	64.6
Coho Salmon	690	3,753	19.2	6.4	104.3	34.8
Chinook Salmon	154	1,958	4.3	1.4	54.4	18.1
Pink Salmon	29	63	0.8	0.3	1.8	0.6
Sockeye Salmon	3,579	16,965	99.4	33.1	471.3	157.1
Haines 1996 (N=92)						
Salmon	22,937	125,619	29.1	10.6	159.6	57.8
Chum Salmon	2,957	20,463	3.8	1.4	26.0	9.4
Coho Salmon	3,754	20,420	4.8	1.7	26.0	9.4
Chinook Salmon	1,398	17,727	1.8	0.6	22.5	8.2
Pink Salmon	1,279	2,789	1.6	0.6	3.5	1.3
Sockeye Salmon	13,549	64,220	17.2	6.2	81.6	29.6
Tenakee Springs 1987 (N=31)						
Salmon	964	4,671	21.9	10.2	106.2	49.3
Chum Salmon	59	364	1.3	0.6	8.3	3.8
Coho Salmon	178	1,371	4.1	1.9	31.2	14.5
Chinook Salmon	89	1,357	2.0	0.9	30.8	14.3
Pink Salmon	555	1,222	12.6	5.9	27.8	12.9
Sockeye Salmon	83	358	1.9	0.9	8.1	3.8
Petersburg 2000 (N=125)						
Salmon	25,192	177,210	23.5	8.6	165.6	60.2
Chum Salmon	1,566	10,873	1.5	0.5	10.2	3.7
Coho Salmon	5,958	31,214	5.6	2.0	29.2	10.6
Chinook Salmon	9,056	106,222	8.5	3.1	99.3	36.1
Pink Salmon	4,828	12,018	4.5	1.6	11.2	4.1
Sockeye Salmon	3,784	16,883	3.5	1.3	15.8	5.7
Wrangell 2000 (N=98)						
Salmon	6,990	50,022	9.4	3.6	67.0	25.5
Chum Salmon	252	1,746	0.3	0.1	2.3	0.9
Coho Salmon	1,753	9,185	2.4	0.9	12.3	4.7
Chinook Salmon	2,424	28,430	3.2	1.2	38.1	14.5
Pink Salmon	389	968	0.5	0.2	1.3	0.5
Sockeye Salmon	2,172	9,694	2.9	1.1	13.0	5.0

Table 3. The estimated harvest and use of eulachon, Dolly Varden, cutthroat trout, rainbow trout, and steelhead[1] for home use, by community, most recent harvest surveys (ADF&G 2007, Paige 2002).

	Percentage of Households				Estimated Number Harvested			Estimated Pounds Harvested		
Species	Using (%)	Harvesting (%)	Receiving (%)	Giving (%)	Total	Per Household	Per Person	Total	Per Household	Per Person
Skagway 1987[a]										
Eulachon	8%	6%	3%	3%	1512	7.4	2.6	189	0.9	0.3
Dolly Varden	39%	24%	16%	7%	1,132	5.5	1.9	3,057	15.0	5.3
Klukwan 1996										
Eulachon	81%	61%	58%	58%	211,104	5,861.0	1,951.0	26,390	733.1	236.7
Dolly Varden	61%	58%	36%	48%	386	10.7	3.6	1,041	28.9	9.3
Cutthroat Trout	16%	16%	10%	13%	69	1.9	0.6	103	2.9	0.9
Rainbow Trout	16%	13%	10%	10%	58	1.6	0.5	116	3.2	1.0
Steelhead	7%	3%	3%	0%	1	0.0	0.0	10	0.3	0.1
Haines 1996										
Eulachon	40%	29%	14%	16%	858,960	1,094.0	396.0	107,371	136.3	49.9
Dolly Varden	47%	37%	14%	10%	6,507	8.3	3.0	17,570	22.3	8.2
Cutthroat Trout	18%	17%	1%	2%	856	1.1	0.4	1,284	1.6	0.6
Rainbow Trout	3%	2%	1%	0%	203	0.3	0.1	407	0.5	0.2
Steelhead	8%	5%	2%	1%	59	0.1	0.0	504	0.6	0.2
Tenakee Springs 1987[a]										
Dolly Varden	39%	32%	10%	19%	471	10.7	5.0	1,272	28.6	13.4
Petersburg 2000										
Dolly Varden	17%	15%	3%	5%	2,448	2.3	0.8	6,610	6.2	2.2
Cutthroat Trout	17%	15%	3%	3%	1,267	1.2	0.4	1,900	1.8	0.6
Steelhead	3%	2%	2%	0%	265	0.2	0.1	2,256	2.1	0.8
Wrangell 2000										
Eulachon	5%	1%	4%	1%	7,622	10.2	3.9	1,906	2.6	1.0
Dolly Varden	9%	7%	2%	2%	899	1.2	0.5	2,429	3.3	1.2
Cutthroat Trout	30%	24%	9%	9%	3,964	5.3	2.0	5,946	8.0	3.0
Rainbow Trout	10%	8%	3%	4%	907	1.2	0.5	1,814	2.4	0.9
Steelhead	16%	4%	13%	8%	107	0.1	0.1	907	1.2	0.5

[a] The 1987 household harvest surveys for Skagway and Tenakee Springs did not collect information on cutthroat trout, rainbow trout, or steelhead (Betts et al. 1999b).

In the 1880s, canneries often acknowledged Tlingit clan rights in some drainages, and some canneries made payment for the right to fish in owned streams, but this practice was discontinued early in the history of the industry (George and Bosworth 1988:29–30). Severe over-harvesting with seines and fish traps eliminated many runs by the late 1930s. Commercial salmon traps, fisheries, and canneries were followed by fisheries for halibut and herring for bait, and later salted herring, red king crab beginning in the 1950s, and black cod in the 1930s and 1950s. In 1925 there was a commercial fishery for Dolly Varden (Smythe 1988:25). The introduction of large cold storage facilities at communities with room for large buying scows, in Petersburg for example, further expanded fisheries.

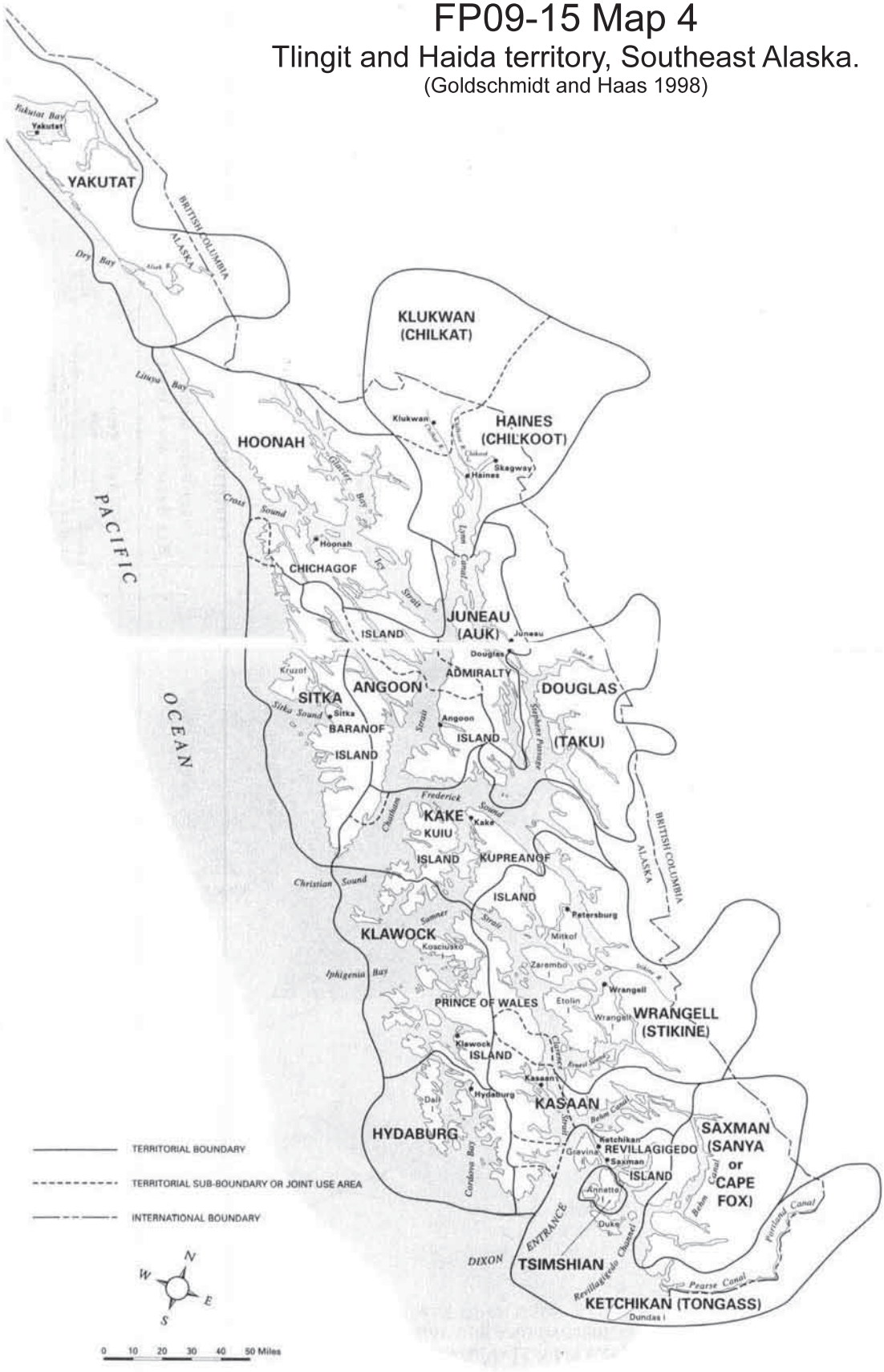
Brief Community Descriptions

This section provides brief descriptions of the communities harvesting fish in Districts 11 and 15, as documented in subsistence use studies (Betts 1994; Betts, Kookesh et al. 1999a, 1999b, 1999c, 1999d;

FP09-15 Map 4

Tlingit and Haida territory, Southeast Alaska.

(Goldschmidt and Haas 1998)



Goldschmidt and Haas 1998; and Paige 2002). Information on these communities' use areas is provided in the section on Use Areas.

Skagway

Skagway, located in District 15, is situated on the mainland at the extreme northern end of Lynn Canal, where the Skagway and Taiya rivers enter Taiya Inlet, approximately 15 miles north of Haines (**Map 1**) (Paige 2002:291). The location of Skagway was once the site of a Chilkat Tlingit village (Betts, Kookesh et al. 2000; Goldschmidt and Haas 1998:32) (**Map 5**). Other seasonal camps and smokehouses existed along the Skagway River, an area encompassed by Unit 1D. Chilkat Tlingit controlled this area that includes what is known today as the Chilkoot Trail, the trade route over Chilkoot Pass to the Canadian Interior. Trade with the Canadian Interior was supervised by Tlingit into the twentieth century. Gold was discovered in the Klondike in the 1890s and the Chilkoot Trail was the most accessible route to the gold fields. The discovery of gold attracted miners, and soon a railway over White Pass superseded the trail. Skagway became Alaska's first incorporated city in 1900. When the gold rush waned, other industries, such as independent, local mining and tourism, replaced it. Tourism has become an increasingly important factor in Skagway's economy (Betts et al. 2000). In 1978 the South Klondike Highway opened into the Interior.

Klukwan

Klukwan, located in Unit 1D, is situated on the north bank of the Chilkat River, 22 road miles north of Haines at the northern end of Lynn Canal (**Map 1**) (Paige 2002:167). Klukwan is a Chilkat Tlingit village of long standing and the principal town of the Chilkat Tlingit, whose territory generally includes the Chilkat River and its upper drainages and the Lynn Canal area to Berners Bay (Betts et al. 1999a) (**Map 5**). Several salmon canneries were located along Chilkat Inlet beginning in 1882. The nearby Dalton Trail was a route to the Canadian Interior used by many during the Klondike gold rush in the 1890s. However, the village has remained predominantly Tlingit. In 1942 the Haines Highway was completed into the Interior, which connected Klukwan to this road system (Betts et al. 1999a).

Haines

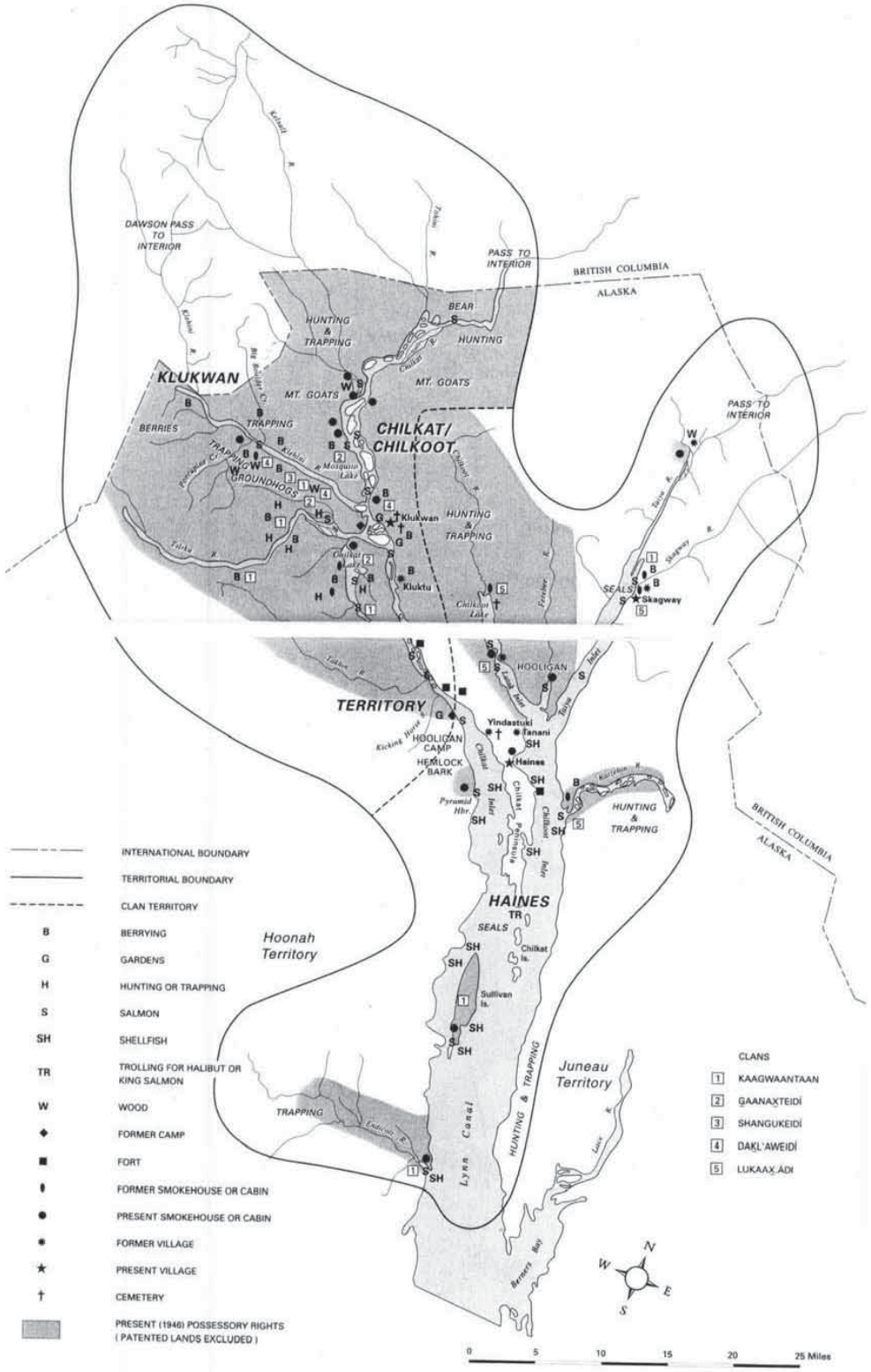
Haines, located in Unit 1D, is situated at the mouth of the Chilkat River at the northern end of Lynn Canal, 80 air miles northwest of Juneau (**Map 1**). The communities of Haines and nearby Klukwan were originally occupied by Chilkat Tlingit who had villages located throughout the area (**Map 5**). People from Haines and Klukwan shared land and waterway ownership in the Chilkat Tlingit territory, which includes the shores of Lynn Canal and its tributaries south to Berners Bay (Paige 2002:75). A United States military base opened in Haines in 1904 and operated through 1945. By the 1990s most canneries had closed and the initial growth of the community from the timber industry had slowed as the timber industry declined. The Haines economy is relying increasingly on tourism.

Tenakee Springs

Tenakee Springs, a small community noted for its natural hot spring, is located along Tenakee Inlet on the east side of Chichagof Island (**Map 1**). It is in the traditional territory of Angoon Tlingit (**Map 6**). Betts et al. (1999b) notes that the community is situated on the location of historical Tlingit settlements. There is an overland route to Hoonah from Tenakee Springs. In the late 1800s, prospectors and miners began living at this location seasonally. A permanent community of new settlers developed as salmon and crab canneries began to operate in the Tenakee area, in 1916; the economy of the community continues to be dominated by the commercial fishing industry and, to a lesser extent, logging (Betts et al. 1999b).

FP09-15 Map 5

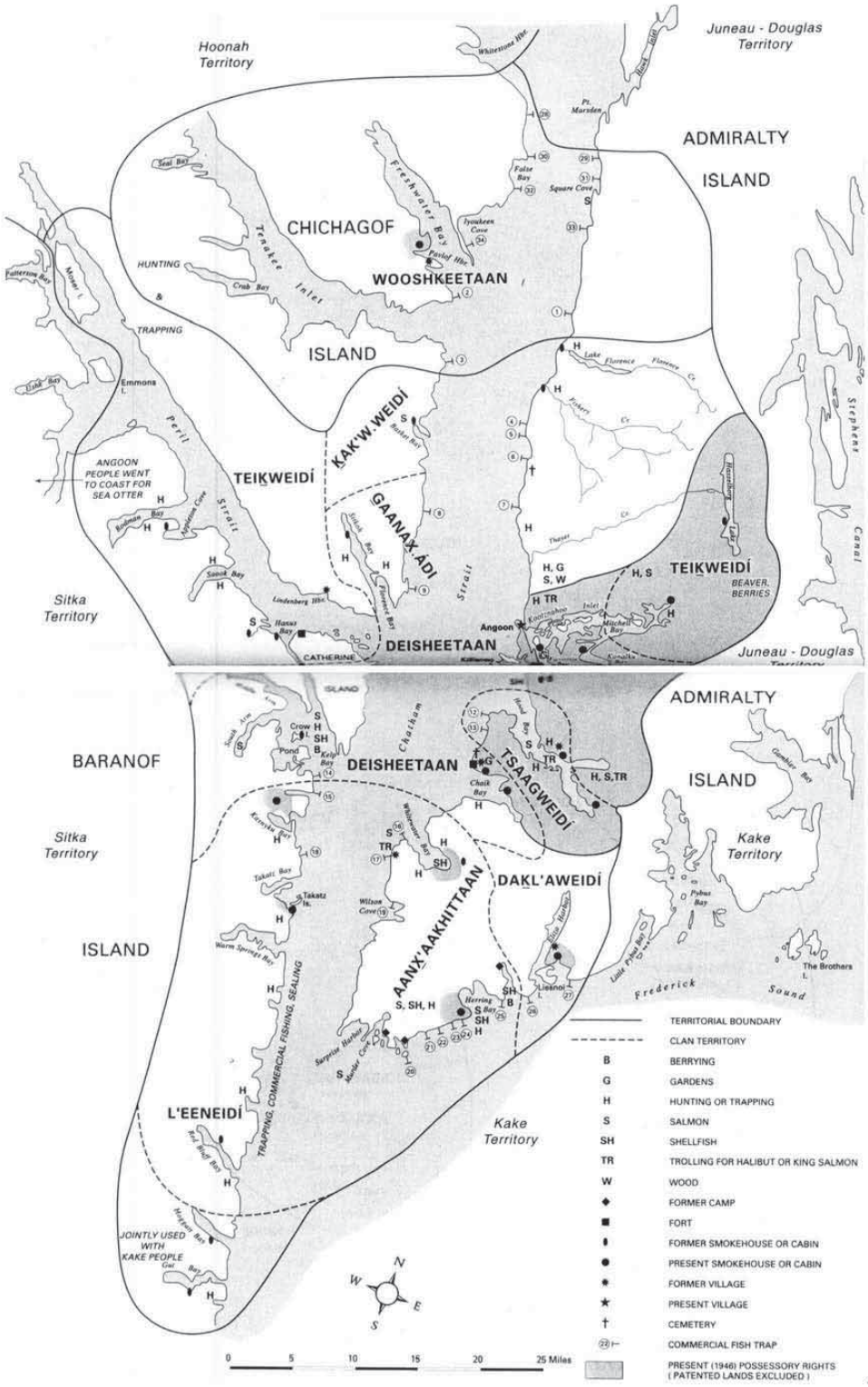
Chilkat (Klukwan-Haines) Tlingit territory, showing use and ownership, pre-1946.
(Goldschmidt and Haas 1998)



FP09-15 Map 6

Angoon Tlingit territory, showing use and ownership, pre-1946.

(Goldschmidt and Haas 1998)



Juneau Area

The Juneau area is not under consideration in this analysis because it is nonrural and residents are not eligible to harvest fish under Federal subsistence regulations. It should be noted, however, that prior to the establishment of the community of Juneau in about 1880, Auk and Taku clans (Tlingit) resided in the area that now includes the Juneau road system and whose traditional territory stretches from the mainland at Berners Bay to portions of Admiralty Island and Lynn Canal to the north (**Map 7**). Both groups resided in numerous camps and villages in the Juneau area. One, in particular, located at Swanson Harbor, at the confluence of Icy Strait and Lynn Canal, was apparently a village jointly used by the Chilkat, Auk, and Hoonah people as a trading center. Taku also traveled inland up the Taku River. Various clans held ownership of resource harvest areas. Many within the Auk and Taku clans moved into the developing town of Juneau once gold was discovered there in 1880 (Goldschmidt and Haas 1998:37). Thus, it is clear that before the establishment of the town of Juneau, the Juneau area was used by the Tlingit for harvesting subsistence resources.

Petersburg

Petersburg is situated at the north end of Mitkof Island on Wrangell Narrows (**Map 1**). The town of Petersburg grew up around a cannery established in 1899, on the northwest shore of Mitkof Island on Wrangell Narrows (Betts et al. 1999c). The community was established predominantly by immigrants who had come directly from Europe, particularly Norwegians. Prior to Petersburg's development by homesteaders and fishermen at the turn of 20th century, Tlingit use of the area occurred at many small settlements. As fish camps or seasonal harvest and production sites, they were part of the traditional land use pattern of Tlingit society (Betts et al. 1999c; Goldschmidt and Haas 1998:73). Along with the evolution of the commercial fishing industry, in which Petersburg has always been a leader in Southeast Alaska, a larger Tlingit community developed in the expanding town. This Indian community has been a permanent and stable component of the town throughout its development. Prior to the founding of the cannery, the Wrangell Tlingit shared control of Frederick Sound with Kake Tlingit (**Map 8**). Salmon were harvested at a creek, across from present-day Petersburg, which belonged to a Wrangell clan (see description of the Wrangell territory below). Commercial fishing dominates the local economy (Betts et al. 1999c; Goldschmidt and Haas 1998:73).

Wrangell

Wrangell is located on the north end of Wrangell Island on Zimovia Strait, and near the mouth of the Stikine River, which reaches into the Canadian Interior (**Map 1**). According to Betts et al. (1999d), the town dates from the construction of the Russian-American trading post in 1836. Two large villages of Wrangell existed at the locations of present-day Wrangell and Deserted Village located on Zimovia Strait (**Map 8**) (Goldschmidt and Haas 1998:73). Wrangell territory extended along the mainland approximately to Cape Fanshaw, across to Kupreanof Island, extending to just south of Etolin Island, areas not in Districts 11 or 15. Descended from the Stikine clans, a riverine people with villages and camps that extended 160 miles up the Stikine River, they controlled the trade network that developed around this drainage. After the Cassiar gold rush in the 1860s permanent settlers began to arrive at Wrangell to fish and log. Both industries continue to dominate the local economy.

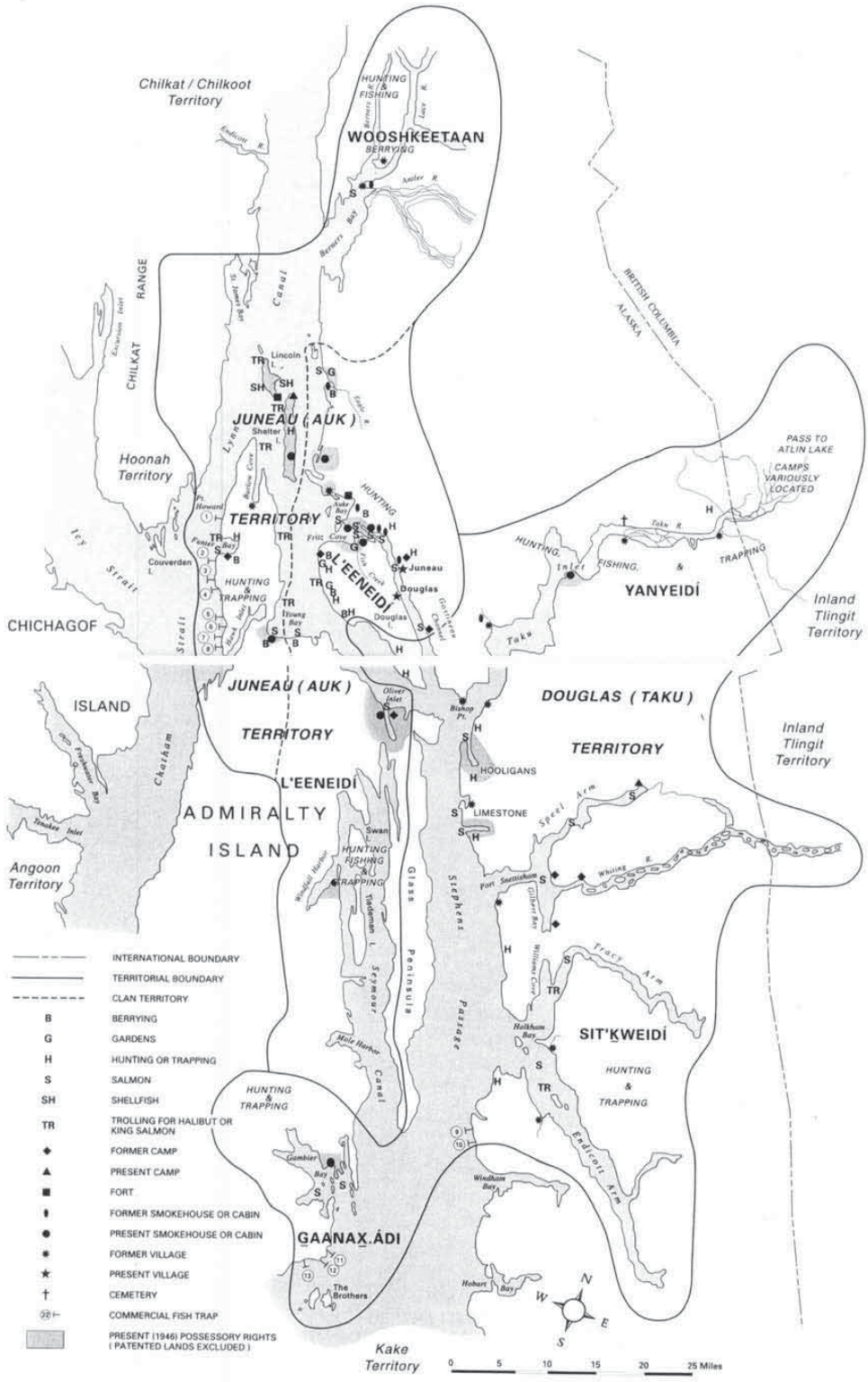
Eight Factors for Determining Customary and Traditional Uses

A community or area's customary and traditional use is generally exemplified through the following eight factors: (1) a long-term, consistent pattern of use, excluding interruptions beyond the control of the community or area; (2) pattern of use recurring in specific seasons for many years; (3) a pattern of

FP09-15 Map 7

Juneau-Douglas Tlingit territory, showing use and ownership, pre-1946.

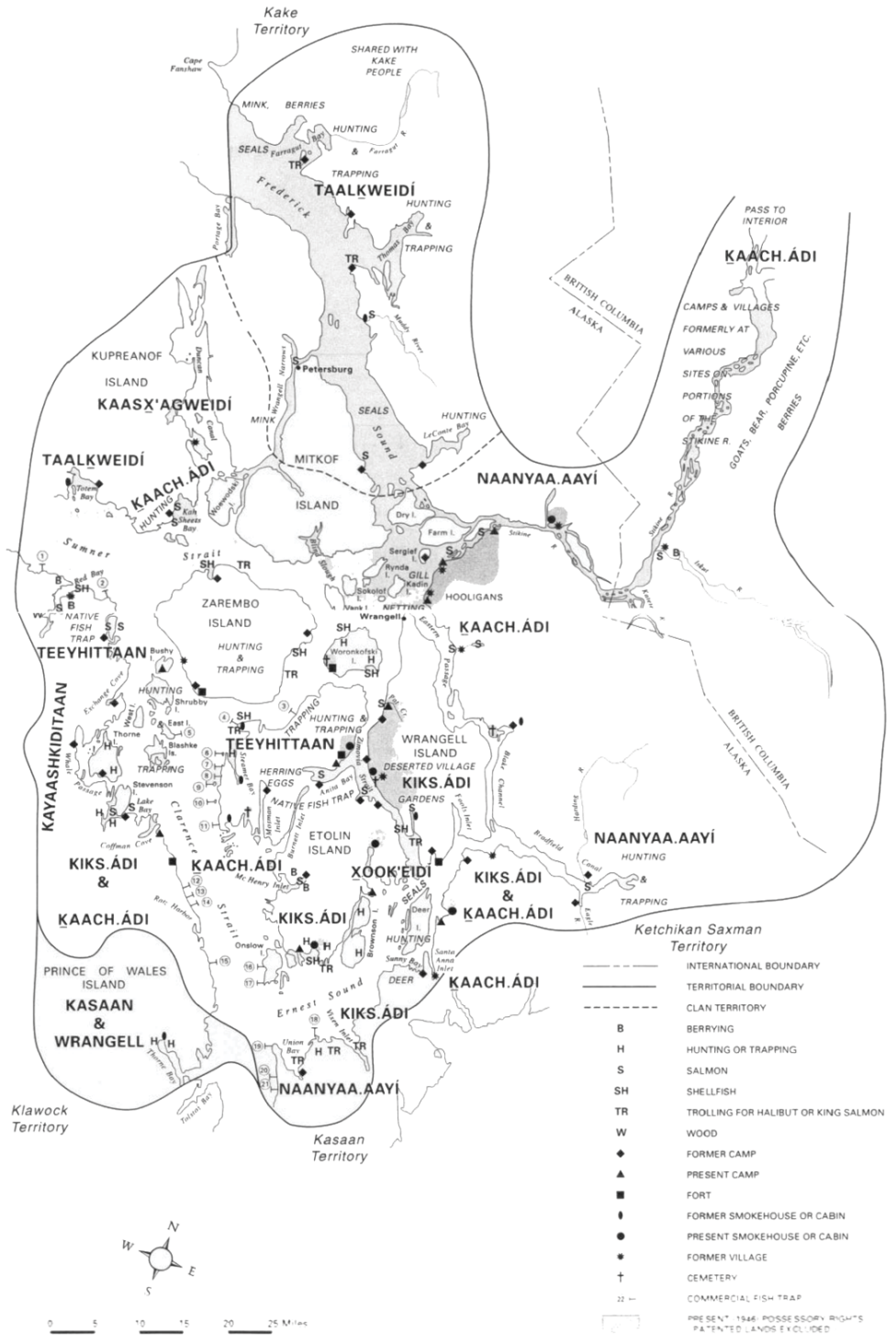
(Goldschmidt and Haas 1998)



FP09-15 Map 8

Wrangell Tlingit territory, showing use and ownership, pre-1946.

(Goldschmidt and Haas 1998)



use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics; (4) the consistent harvest and use of fish or wildlife as related to past methods and means of taking: near, or reasonably accessible from the community or area; (5) a means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate; (6) a pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation; (7) a pattern of use in which the harvest is shared or distributed within a definable community of persons; and (8) a pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

The Federal Subsistence Board makes customary and traditional use determinations based on a holistic application of these eight factors (50 CFR 100.16(b) and 36 CFR 242.16(b)). In addition, the Board takes into consideration the reports and recommendations of any appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources (50 CFR Part 100.16(b) and 36 CFR 242.16(b)). The Board makes customary and traditional use determinations for the sole purpose of recognizing the pool of users who meet the eight factors. The Board does not use such determinations for resource management or restricting harvest. If a conservation concern exists for a particular population, the Board addresses that concern through the imposition of harvest limitations or seasonal restrictions rather than by limiting the customary and traditional use finding.

Application of the eight factors indicates that residents of rural communities in Southeast Alaska have customarily and traditionally harvested a variety of fish and wildlife throughout the Southeast Alaska region and beyond. Some of these harvests occur during travel of substantial distances by boat, airplane, and foot.

Long-Term, Consistent Pattern of Use

Salmon, trout, char, smelt, and eulachon have been seasonally harvested and used by Tlingit communities in Southeast Alaska since well before historic contact to the present.[4] Non-Natives throughout the region have also established long-term patterns of harvest and use of these fish in the streams, lakes, and marine waters where they are found. Variation from traditional patterns stem from, at least: (1) regulatory restrictions on eligibility, seasons, daily and annual harvest limits, gear types, and bait; (2) increased competition from out-of-state and nonrural residents; (3) variations in resource availability for reasons, including changes in abundance related to habitat change, over harvesting, and commercial harvesting; and (4) changes in available technology. Where not restricted, rural residents of the region have adopted enhanced harvest technologies, such as outboard boat motors and mechanical rod and reel gear, in addition to traditional techniques such as the use of nets, gaffs, and spears. Many patterns of use, including uses of resources obtained through gifting and exchange, remain the same throughout the region when access to those resources has not been restricted. Other patterns of use include various kinds of processing and preservation of fish for household consumption and customary trade, involving the gifting and sharing of fish, fresh and processed, with individuals and groups of Natives and non-Natives. Tlingit are dependent on wild resources, and their harvest and use have continued into the modern era. The harvest and use of wild fish is a way of practicing and teaching young people important cultural values and customary rules, such as harvesting only what is needed and not wasting (Newton and Moss 2005:2).

[4] Cf. Betts 1994; De Laguna 1972, 1990; Emmons and De Laguna 1991; George and Bosworth 1988; Goldschmidt and Haas 1998 (original 1946); Kookesh 2004; Langdon 2006; Mills 1982; Mills et al. 1983; Mobley and McCallum 2001; Moss et al. 1990; Newton and Moss 2005; Niblack 1890; Paige et al. 2007; Price 1990; Ratner and Dizard 2006; Ratner et al. 2006; Smythe 1988; Stewert 1977; Turek 2005; Turek et al. 2006; and Thornton et al. 1990.

The communities have consistently harvested wild fish for home use. Community-based studies by ADF&G have documented the harvest and use of these resources, as presented in **Tables 2, 3, and 4**. The information in these tables exists in the ADF&G's Community Subsistence Information System (CSIS) (ADF&G 2007). These tables indicate the estimated harvests, if harvests during the study year were reported, of chum, coho, Chinook, pink, and sockeye salmon, as well as nonsalmon species, such as eulachon, Dolly Varden, cutthroat trout, rainbow trout, and steelhead. The data present a one-year snap shot. Harvest patterns for fish species vary annually due to a number of factors, such as weather conditions and the availability of these and other species.

Seasons of Use

Community studies, survey research, and permit information indicate that peak harvests of fish tend to occur during the peak of spawning runs. This is especially true for anadromous species such as salmon. However, some species are stream resident and taken year-round, or at specific times of year. This varies by locality somewhat because of the availability of other resources, the timing of the harvest in conjunction with other activities, and local custom. Steelhead are generally harvested in the spring (mid-March to mid-June), though some communities reported harvest of steelhead over a much longer time period (ADF&G 1989, 1991). Data collected in previous research is somewhat inconsistent in reporting harvest seasons for specific species, but it is clear that many communities have a long history of harvesting Chinook salmon year-round. Chum, coho, pink, and sockeye salmon are harvested in slightly staggered and overlapping spring and summer seasons. Some areas are used for longer harvest periods, with considerable variation in effort within those longer periods. Traditionally, whole families moved to their fish streams where intense harvesting and processing of salmon, meat, other fish, and berries took place (Newton and Moss 2005:36). Fish were dried in September and October (Goldschmidt and Haas 1998:114). This practice is continued by some, while many choose to harvest fish, particularly salmon, on day or over-night trips.

The seasonal patterns of use of smelt and eulachon are not documented in the same manner as salmon, trout, and char. However, it is clear from ethnographic sources and technical papers (Cf. Betts 1994) that harvest and use of eulachon was, and continues to be, an integral part of the subsistence round of the Tlingit living in communities in proximity to the principal contemporary eulachon runs in the Southeast Alaska region.

Methods and Means

Before European contact and in historic times, technologies used in harvesting finfish included, at least, weirs, spears, traps, gaff hooks, set hooks, trolling hooks, and throat gorges (Newton and Moss 1993, Stewart 1977). Later gear included gill nets, seine nets, long line, and rod and reel gear. All of these were efficient methods of harvest. Current subsistence regulations allow retention of fish caught incidental to the catch of fish for which permits are required, which fits with traditional values of using all of the resources harvested, including incidental catches.

Areas of Use

People in Southeast Alaska took fish from bays and streams that they either traditionally owned or had permission to use; this practice continues today. Traditional clans owned specific streams and clan leaders controlled access and use of the resources there. Infringement on streams was a serious offense and could result in retribution. These clan-owned areas are documented in Goldschmidt and Haas' report *Haa Aani, Our Land* (1998) and other sources. Not all streams traditionally used were adjacent to villages, and people sometimes traveled long distances to get fish. Some harvested fish for food along the way

Table 4. The estimated harvest and use of wild resource for home use, by resource category and community, most recent harvest surveys (ADF&G 2007, Paige 2002).

Resource Category	Percentage of Households Using	Harvest Level in Pounds Usable Weight: Pounds Per Household	Harvest Level in Pounds Usable Weight: Pounds Per Person	Percentage of Total Wild Resource Harvest
Skagway 1987				
All Resources	95.8%	137.5	48.1	100%
Fish	93.7%	94.8	33.2	68.9%
Salmon	72.8%	50.5	17.7	36.7%
Non-Salmon Fish	80.7%	44.3	15.5	32.2%
Land Mammals	36.3%	10.4	3.6	7.6%
Marine Mammals	0.5%	0	0	0%
Birds and Eggs	18.6%	1.0	0.4	0.7%
Marine Invertebrates	76.0%	25.6	9.0	18.6%
Vegetation	46.2%	5.7	2.0	4.1%
Klukwan 1996				
All Resources	100%	1,881.8	608.3	100%
Fish	100%	1,605.8	518.6	85.3%
Salmon	100%	825.4	266.5	43.9%
Non-Salmon Fish	100%	780.4	252.0	41.5%
Land Mammals	90.3%	85.2	27.5	4.5%
Marine Mammals	71.0%	8.1	2.6	0.4%
Birds and Eggs	35.5%	2.8	0.9	0.1%
Marine Invertebrates	77.4%	43.3	14.0	2.3%
Vegetation	100%	136.6	44.7	7.3%
Haines 1996				
All Resources	97.8%	534.8	195.8	100%
Fish	95.7%	380.2	139.2	71.1%
Salmon	89.2%	159.4	58.4	29.8%
Non-Salmon Fish	86.0%	220.8	80.8	41.3%
Land Mammals	78.5%	79.7	29.2	14.9%
Marine Mammals	9.7%	2.7	1.0	0.5%
Birds and Eggs	32.3%	3.8	1.4	0.7%
Marine Invertebrates	77.4%	28.7	10.5	5.4%
Vegetation	87.1%	39.7	14.5	7.4%
Tenakee Springs 1987				
All Resources	100%	701.9	329.9	100%
Fish	96.8%	279.2	131.2	39.8%
Salmon	77.4%	105.0	49.3	15.0%
Non-Salmon Fish	96.8%	174.2	81.9	24.8%
Land Mammals	87.1%	288.2	135.5	41.1%
Marine Mammals	9.7%	16.2	7.6	2.3%
Birds and Eggs	32.2%	4.4	2.1	0.6%
Marine Invertebrates	93.5%	91.4	42.9	13.0%
Vegetation	87.1%	22.5	10.6	3.2%

(Continued)

Table 4. (Continued).

Resource Category	Percentage of Households Using	Harvest Level in Pounds Usable Weight: Pounds Per Household	Harvest Level in Pounds Usable Weight: Pounds Per Person	Percentage of Total Wild Resource Harvest
Petersburg 2000				
All Resources	92.8%	444.0	161.4	100%
Fish	88.0%	281.9	102.4	64.1%
Salmon	75.2%	165.6	60.2	37.6%
Non-Salmon Fish	76.8%	116.2	42.2	26.4%
Land Mammals	52.8%	47.5	17.3	10.8%
Marine Mammals	0%	0	0	0%
Birds and Eggs	17.6%	1.7	0.6	0.4%
Marine Invertebrates	80.0%	102.1	37.1	23.2%
Vegetation	59.2%	10.9	4.0	2.5%
Wrangell 2000				
All Resources	93.9%	439.1	167.4	100%
Fish	86.7%	156.2	59.6	35.6%
Salmon	78.6%	67.0	25.5	15.3%
Non-Salmon Fish	74.5%	89.3	34.0	20.3%
Land Mammals	60.2%	102.0	38.9	23.2%
Marine Mammals	0%	0	0	0%
Birds and Eggs	15.3%	3.6	1.4	0.8%
Marine Invertebrates	80.6%	156.2	59.6	35.6%
Vegetation	64.3%	21.1	8.0	4.8%

while engaged in hunting or trapping. As people in Southeast Alaska began participating in commercial fisheries in the nineteenth century, subsistence fishing often took place immediately before, during, or after commercial openings. This pattern of harvest in streams closely accessible as well as farther away in conjunction with commercial fishing persists in contemporary life (cf. Paige et al. 2007).

All five salmon species are found in the region, but their spawning streams are not distributed uniformly. For instance, some residents travel 20 or 30 miles, or more, to harvest sockeye salmon at stream sites. Similarly, Chinook salmon spawning is limited to a few mainland rivers and one stream on Admiralty Island (ADF&G 1989). Local knowledge of fish behavior and life cycles and the ability to use specialized harvest methods are important for successful harvest.

The State's Subsistence/Personal Use Salmon Permit system indicates that Districts 11 and 15 are used by residents of Southeast Alaska communities to harvest salmon (Fall, Brown, Caylor, Coffing et al. 2003; Fall, Brown, Caylor, Georgette, et al. 2003). However, community-level data exist for only two years, 2001/02 and 2002/03, when residents of Skagway, Klukwan, Haines, Gustavus, Hoonah, Tenakee Spring, Angoon, Sitka, and Petersburg reported harvesting salmon in Districts 11 and 15 on State salmon permits.

Limited data are available from the Statewide Sport Fish Harvest Survey, a mail out survey conducted by ADF&G. The survey was designed to provide statewide and regional estimates of effort and harvest of fish by sport fish license holders using sport fish gear under sport fish regulations. The Statewide Sport Fish Harvest Survey is not designed to provide detailed harvest and effort estimates for individual

streams. From 1996 to 2006 there were 107 responses to the statewide harvest survey from rural residents of Southeast Alaska who reported sport fishing in Districts 11 and 15. Of these 107 entries, 32 fished in fresh waters. A further examination of which streams were fished found that 24 of these entries were for waters crossed by the Juneau road system, including fishers from the communities of Skagway, Sitka, Wrangell, Pelican, Haines, and Gustavus. (A single survey respondent may have provided more than one of the 107 entries in survey results.) Although these harvests were reported under the Statewide Sport Fish Harvest Survey, the intent and purpose of these harvests is unknown. It is possible that the fishers were harvesting for subsistence under sport fishing regulations in the absence of subsistence regulations.

Most of the freshwater sport fishing effort within Districts 11 and 15 by Southeast Alaska residents, 1996–2006, was exerted by the residents of Juneau (identified as survey responders who reside within zip codes 99801, 99802, 99803, 99812, 99824, 99850). Roughly 5,000 entries of anglers fishing in Districts 11 and 15 were from Juneau residents fishing in salt water and 1,200 entries were from Juneau residents fishing in freshwater (Pappas 2007, pers. comm.)

People continue to harvest and use trout as a subsistence resource, even though in some locations it may only be harvested under sport regulations. The ADF&G studies indicate considerable variation in percentages of households using char and trout. In recent surveys the portion ranged from 17% to 61% of households using char and trout, and from 15% to 58% of households harvesting char and trout, in six communities included in this analysis (**Table 3**). Considerable variation also exists among communities in the amount of char and trout harvested (**Table 3**).

Eulachon runs occur in specific areas and are targeted for their oil for use and trade by those communities closest to those areas, including, from north to south: Situk River and Dry Bay near Yakutat; Chilkat River in District 15; Taku Harbor in District 11; Excursion Inlet near Gustavus; Stikine River near Wrangell; Chickamin River and Unuk River near Ketchikan; and others (Goldschmidt and Haas 1998). Eulachon oil is rendered and traded.

Specific use areas for each community with fish harvests in Districts 11 and 15, indicated in subsistence use studies, are discussed in the following sections (e.g., Betts et al. 1999a; Betts, Victor et al. 1992; Paige 2002; and Smythe 1988).

Skagway

Skagway residents generally prefer to harvest fish close to the community, but there are harvests that occur farther from the community. The 1987 and 1988 Tongass Resource Use Cooperative Survey (TRUCS) and subsequent reviews of mapped data by community residents in 1992 and 1993 (1991 in Petersburg and Haines; 1987 in Tenakee Springs) indicated that residents of Skagway identified salmon fishing areas (**Map 2**) within Districts 11 and 15 in Lynn Canal from Seduction Point to Sullivan Island, including waters around the Chilkat Islands as well as the waters around Lincoln, Shelter, and Douglas Islands near Juneau (Paige 2002:296). Dolly Varden and eulachon contributed to the fish harvested for home use in Skagway in 1987. The 1987 household harvest and use survey for Skagway did not collect information on cutthroat, rainbow trout, or steelhead. Residents identified nonsalmon harvest areas (**Map 3**) including waters of Lynn Canal at Sullivan and Chilkat Islands, and off the mouth of Endicott River in District 15 (Paige 2002:299).

Klukwan

The Chilkat River, from its mouth to headwaters, and its tributaries (in District 15) constituted the main salmon harvest area for Klukwan residents in 1987, however, salmon were also harvested in other areas

of District 15: 1) Chilkat Inlet from Seduction Point to the mouth of the Chilkat River; 2) at Klukwan; 3) several locations upriver from Klukwan; 4) portions of Big Boulder Creek and the Kelsall River; 5) Tsirku River outlet; 6) the head of Lutak Inlet, the Chilkoot River, and Chilkoot Lake; 7) Chilkat Lake; 8) the Klehini River for Chinook, coho, and chum salmon; 9) a larger extent of Lutak Inlet, as well as Lynn Canal as far south as Bridget Cove (for rod and reel trolling); and 10) William Henry Cove (for rod and reel trolling). The heaviest levels of use are adjacent to the community, at the mouth of the Tsirku River, the Chilkat River, the Chilkat Inlet, Lynn Canal, Pyramid Harbor, and Letnikof Cove (Betts et al. 1999a).

The nonsalmon harvest area mapping had some inadequacies, only included one or two household's use areas, and therefore, did not capture many areas used by the community (**Map 3**). Review of the map shows that Klukwan harvested nonsalmon fish within District 15 in the Chilkat River at four, six, seven, and nine mile for hooligan, trout, and char; the Tsirku River outlet for trout and char; and the Chilkat Lake for trout and char (Betts et al. 1999a).

Haines

The Chilkat territory (**Map 5**) includes Federal public lands and waters within District 15 as far south as Berners Bay. This area has been used by residents of Haines to harvest wild resources (Goldschmidt and Haas 1998:99). The Chilkat Islands located to the northwest of Sullivan Island are located within the boundaries of District 15 and were used for trolling for nonsalmon fish (Goldschmidt and Haas 1998:34–35).

During update and review sessions with local residents in 1992 and 1993, following the initial TRUCS study, Haines respondents reported using areas (**Map 2**) in District 15 including: 1) Berners Bay for coho, by rod and reel; 2) Chilkat Lake for sockeye and coho; 3) the Klehini River up to Big Boulder Creek, and tributaries of the Klehini River including Herman Creek for chum salmon; 4) Taiya Inlet; and 5) St. James Bay for chum, pink, and coho, by rod and reel (Paige 2002:82).

Tenakee Springs

Tenakee Springs households identified areas used for salmon fishing on maps as part of the ADF&G's Subsistence Division 1984 household harvest survey project, but none showed use in Districts 11 and 15 (**Map 2**) (Paige 2002:306). However, according to 1991 Subsistence/Personal Use Salmon Permits, Tenakee Springs' sockeye salmon harvest area included the Taku River area in District 11 and pink and chum salmon were harvested in streams within the Juneau Management Area (Betts et al. 1992:29). Nonsalmon fish harvest areas have not been mapped by ADF&G (Betts et al. 1992:29; Paige 2002:307–308).

Petersburg

Only a small portion of the Petersburg use area for fish is in District 11 (**Map 3**). A baseline harvest survey conducted in 1987 indicated that fish other than salmon were harvested by Petersburg residents in Seymour Canal in District 11, east of Admiralty Island off of Stephens Passage. No mention was made regarding what kinds of fish were harvested (Smythe 1988:87).

Wrangell

Wrangell households identified areas used for salmon fishing on maps as part of the ADF&G Subsistence Division's 1987 household harvest survey project (**Map 2**). Wrangell residents primarily harvested fish in areas closer to the community, but they harvested salmon in Stephen's Passage near Auke Bay in District

11 (Betts et al. 1992:28). Nonsalmon fish were harvested in Taku Harbor in District 11 and St. James Bay, Sullivan and Chilkat Island areas, Chilkat Inlet, and Lutak Inlet in Lynn Canal in District 15 (**Map 3)** (Betts et al. 1992:31).

Handling, Preparing, Preserving, and Storing

Fish are handled, prepared, preserved, and stored using methods common throughout Southeast Alaska. These include drying, smoking, canning, salting, pickling, freezing, and sometimes fermenting. Occasionally subsistence products may be preserved in seal or eulachon oil. Traditional means of taking care of fish are practiced extensively today. For instance, salmon are cut and scored for efficient drying much as they were in the past. The fish are smoked in wooden smokehouses or metal smokers, air dried, canned, frozen, refrigerated, and cooked freshly caught. Although the use of fermented salmon heads and eggs is not as common as it once was, salmon heads and roe are still aged and fermented in some communities, often by traditional methods of burying the eggs or heads in containers on the beach below high tide (ADF&G 1989).

Late runs of salmon were frozen historically, but depended on cold weather instead of electric freezers. People throughout Southeast Alaska still harvest some of their fish after they have spawned because their low fat content makes them the best for dry fish. Tlingit people of the communities in Districts 11 and 15 continue to fish for eulachon on the Chilkat River and render the fish into oil in traditional ways (ADF&G 1989).

Handing Down of Knowledge of Fishing

Knowledge of fishing skills, values, and lore are transmitted from generation to generation in ways common throughout Southeast Alaska. Among Native residents, clan and family ties continue to provide important vehicles for transmission of knowledge. The learning of skills associated with harvesting and preparing fish generally derives from a process of observation and participation with elder relatives or community residents, as well as listening to stories describing fish lore and skills. Trout, in particular, are used to teach young children and grandchildren how to fish. Small children lack the coordination to use lures and flies (FSB 2000a:9). Traditionally the new generation learns subsistence methods from key matrilineal kinsmen. In traditional Tlingit culture, young boys learn virtually all lore and economic skills from their mother's brothers (ADF&G 1989). In District 11 and 15, amongst the Tlingit today, fishing skills and locations continue to be learned from uncles as well as other relatives and elders. Techniques and harvesting equipment are still generally shared among households (ADF&G 1989). Many rural communities in Southeast Alaska are characterized by large extended families with long history and experience in their local areas. Residents of rural communities in Southeast Alaska possess considerable depth of knowledge regarding resource skills, values, and cultural connections to salmon, trout, char, smelt and eulachon. Important learning about subsistence takes place at potlatches and other traditional celebrations where subsistence foods figure importantly**.** Subsistence resources may be harvested, as needed, during travel to and from these occasions.

Sharing

Giving, receiving, trading, and selling fish is ubiquitous among the Native peoples of Southeast Alaska. This tradition of distribution and exchange continues as part of the great giveaways associated with elaborate feasts and ceremonies such as the potlatch, and between individuals and families at the everyday level. Sharing occurs throughout all of the Southeast Alaska communities, and fish is one of the main elements. This pattern continues, as is shown in household survey data (**Table 3**). These sharing practices are a major element of the cultures of these communities. Communities often have primary providers for

particular resources, the designated hunters or fishers for sometimes large groups of relatives or socially important people. Other sharing, whether in gifting or exchange, is accomplished by individuals with immediate family, extended relatives, or specific trading partners in the same community or from different communities.

Reliance Upon a Wide Diversity of Fish and Wildlife Resources

Salmon were, and continue to be, the mainstay of the economy and the most important group of subsistence species for Southeast Alaska communities. Salmon fishing has been augmented by, and is complementary to, the seasonal round of collecting other kinds of fish, hunting for terrestrial and marine mammals, collecting intertidal resources, and harvesting plants from beaches, forests, and elsewhere. The harvest and use of cutthroat trout, rainbow/steelhead trout, and Dolly Varden is widespread across the region and similarly fits in the seasonal round of subsistence activities (ADF&G 1989; ADF&G 1991). Subsistence surveys indicate that communities whose residents have harvested subsistence fish in Districts 11 and 15 tend to harvest significant quantities of fish and wildlife. Virtually all households use some subsistence resources, and almost all households harvest some subsistence resources for their own use. Overall harvest levels vary across the resources utilized. **Table 4** shows estimated per capita subsistence harvest levels by community, based on the most recent household surveys conducted between 1987 and 2000. These studies, some of which were part of the Tongass Resource Use Cooperative Study, show significant harvests of salmon and other finfish for the communities harvesting fish in Districts 11 and 15.

Effects of the Proposal

If this proposal is adopted there could be effects on subsistence users because a "no Federal subsistence priority" determination specifically for the Juneau area would not provide rural residents the ability to harvest fish from Federal public waters along the road-connected area of Juneau under Federal regulations. Data presented in the analysis show that there are Federally qualified rural residents harvesting or attempting to harvest fish from the Juneau area in Districts 11 and 15. Thus, if this proposal is adopted, rural residents would no longer be eligible to harvest fish in fresh waters of the Juneau road system area if they choose to harvest under Federal subsistence regulations.

If this proposal is adopted it would mean making a specific customary and traditional use determination for a portion of Districts 11 and 15—the Juneau road system. Residents of the Juneau area already are ineligible to harvest fish under Federal subsistence regulations.

If this proposal is not adopted, effects on fish stocks and populations are not anticipated because no change in subsistence harvests is anticipated. Permits are required for Federal subsistence salmon and trout harvests in Districts 11 and 15, including the Juneau road system. The permits are used to monitor harvests in order to effectively address any conservation concerns.

OSM CONCLUSION

Oppose Proposal FP09-15.

Justification

Proposal FP09-15 requests a "no Federal subsistence priority" customary and traditional use determination for the Juneau road system including all waters crossed by or adjacent to roads connected

to the City and Borough of Juneau road system, situated in Districts 11 and 15 of the Southeastern Alaska Area.

Districts are the typical geographic descriptor for which the Board has made customary and traditional use determinations for fish in the Southeastern Alaska Area. The Juneau road system area is estimated to be less than 10% of the area of these fishing Districts. The location-specific customary and traditional use determinations for fish in Southeast Alaska were adopted from State regulations.

Because the proposal seeks to narrow an existing customary and traditional use determination, a full analysis and re-evaluation of the existing determination was conducted. The eight factors provide a general framework for examining a pattern of use of a resource by rural residents of Alaska; such an examination does not require a factor-by-factor analysis. Based on an integrated discussion of the factors, residents of rural Southeast Alaska demonstrate a customary and traditional pattern of use for Dolly Varden, trout, smelt, and eulachon throughout Districts 11 and 15. Since no specific customary and traditional use determination has been made for all other fish, all Federally qualified rural residents in Alaska are eligible to harvest all other fish in the Federal public waters of Districts 11 and 15.

Residents of the Juneau road-connected area live in an area determined to be nonrural by the Federal Subsistence Board, and therefore are not Federally qualified subsistence users. Although Juneau residents do not have eligibility under ANILCA Title VIII to fish under Federal subsistence regulations due to their nonrural status, Federally qualified rural residents do have eligibility. Data presented in the analysis show that there is customary and traditional use of fish in Districts 11 and 15, which includes the Juneau road system, by Federally qualified rural residents, including users from the nearby communities of Klukwan, Haines, Skagway, Tenakee Springs, Petersburg, and Wrangell. If Federal subsistence harvests of fish were to increase on the Juneau road system, permit reporting will capture that change. Currently there are no conservation concerns. If conservation concerns arise, they can be dealt with through harvest limits or seasonal restrictions. Customary and traditional use determinations merely identify the pool of eligible users.

Review of Council and Board transcripts, regulatory proposals, and Council recommendations, indicate that the Council consciously included the Federal public waters of the Juneau road system area, among other remainder areas, open to subsistence for Federally qualified residents of rural Southeast Alaska for Dolly Varden, trout, smelt and eulachon; it was not an incidental inclusion. ANILCA Title VIII, Section 804, provides that "the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes." Information in the analysis addressing the "eight factors" indicates that a customary and traditional pattern of use of fish exists on the Juneau road system by residents of rural Southeast Alaska.

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INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-15

The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses. FP09-15 seeks a finding of "no subsistence priority" for fish along the Juneau road system because of concerns over conservation should the existing customary and traditional use finding be retained. However, customary and traditional use determinations are for the sole purpose of recognizing the pool of users who demonstrate a customary and traditional pattern of use and not for resource management or restriction of harvest. Conservation concerns are best addressed through the imposition of harvest limitations or seasonal restrictions rather than by limiting the customary and traditional use finding.

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-15 Juneau Road System – Customary and Traditional Use Determination

Introduction: Proposal FP09-15 requests that the Federal Subsistence Board (Federal Board) demonstrate customary and traditional findings for individual communities for fish stocks within Fisheries Districts 11 and 15 on waters crossed by roads within the current boundaries of the City and Borough of Juneau, consistent with the course of action suggested by a member of the Federal Board on January 13, 2006. The proponent requests the eight regulatory factors concerning customary and traditional use of each specific fish stock by each community for each stream be evaluated and reviewed by the Federal Board. The Juneau non-rural area has no specific customary and traditional use determination and currently falls under the federal regulation category "Remainder of the Southeastern Alaska Area." Under this designation, the Juneau road system area is open to the federal subsistence harvest of Dolly Varden, trout, smelt, and eulachon by all rural residents of the Southeast Alaska and Yakutat areas, and to subsistence harvest of salmon by all rural residents of Alaska. These overly broad designations which provide a federal subsistence preference for the far north rural residents of Barrow to fish for salmon on streams in a southeastern urban community over 1000 air miles from home, and which provide a preference to rural residents of the southern southeast community of Hydaburg, in an urban northern southeast community over 225 air miles from home, are unnecessary, unsupportable, and contrary to both common sense and the law as recently interpreted by the Ninth Circuit.

Background: The waters that would be subject to this determination constitute a very small portion (less than 10%) of the freshwater fisheries in Districts 11 and 15 of Southeast Alaska. They are very important to the residents of the Juneau area but are not important to rural residents and are rarely used for any purpose by rural residents of any community. In acting on previous proposals, the Federal Board suggested it would be appropriate to adopt a determination of "no Federal subsistence priority."[1] But later, in December 2007, the Federal Board rejected the State's proposal (FP08-04) requesting such a determination, without evaluating the eight regulatory factors concerning customary and traditional use of each fish stock by each community. As early as 2000, the Interagency Staff Committee informed the Federal Board that there was a lack of substantial evidence to show that communities in the region have customarily and traditionally harvested and used the stocks of rainbow trout, cutthroat trout, and Dolly Varden along the Juneau road system. The current federal staff analyses does not provide substantial evidence to support a customary and traditional use finding for any specific fish stocks in these waterways by any residents from rural communities living outside the Juneau area. There is nothing in the staff analysis that would support an argument that the taking of any fish stock on the Juneau road system constitutes "a long established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation" for any rural community, or that the taking of any fish stock on the Juneau road system "plays an important role in the economy" for any rural community. Because there is no substantial evidence for these arguments, it is clear that any use of Juneau road system fish stocks falls

[1] Federal Board's analysis of FP06-31 in January 2006 and threshold analysis of the Federal Board's denial of the State's Request for Reconsideration FRFR 06-05, dated August 22, 2006.

outside the regulatory definition of customary and traditional use, *see* 50 C.F.R. §100.4. No evidence is presented in the federal staff analysis that indicates a subsistence opportunity along the Juneau road system would ever even be used by any community in Southeast Alaska.

Application of the September 23, 2008, Ninth Circuit Court opinion in *State of Alaska v. Federal Subsistence Board*, 544 F.3d 1089, makes it clear that an adequate record to support a C&T determination for the fisheries on the Juneau road system has not been developed and cannot be established. As the Court held in its decision, Federal Board C&T determinations must be supported by substantial evidence of a specific rural community or area's demonstrated customary and traditional taking of a specific wildlife population or specific fish stock, not general species, within specific geographic locations. *Alaska v. Federal Subsistence Board*, at 1094-99. The Board's determination must have a "substantial basis in fact." *Id*. at 1094. The Court held: "Under 50 C.F.R. §100.16, C & T determinations should 'identify the specific community's or area's use of specific fish stocks and wildlife populations,'" "and not Chistochina's use of moose in general." *Id*. at 1096. The Court added that the Federal Board's "regulations clearly tie C & T determinations to the specific locations in which wildlife populations have been taken" and "each C & T ***determination*** must be tied to a specific community or area and a specific wildlife population." *Id.* at 1097 (emphasis in original). The Court further emphasized: "Specific communities and areas and specific fish stocks and wildlife populations are, by definition, limited to specific geographic areas" and "a C & T determination is a determination that a community or area has taken a species for subsistence use ***within a specific area***." *Id*. at 1097-98 (emphasis in original).

The Ninth Circuit pointed out that six of the Federal Board's eight C&T factors refer to a "pattern of use" of "specific fish stocks or wildlife populations" and a seventh factor also imposes explicit geographic limitations by directing the Board to consider whether there is "consistent harvest and use of fish or wildlife . . . near, or reasonably accessible from the community or area." *Id.* at 1098; *see also* 50 C.F.R. 100.16(b). Available information cannot support a determination that any rural community has a "pattern of use" of any fish stock on the Juneau road system. There has been no "consistent harvest" of fish stocks on the Juneau road system by any rural community, and the Juneau road system fish stocks are not "near or reasonably accessible" to any rural community. Federal staff reports fail to provide any substantial evidence to support arguments that use of the isolated Juneau road system stocks can satisfy the Federal Board's regulatory definition of customary and traditional use, *see* 50 C.F.R. 100.4, and likewise fail to provide any substantial evidence to support an argument that any community or area "generally exhibits" the Boards regulatory factors for making a positive C&T determination for any specific stock of fish on the Juneau road system. *See* 50 C.F.R. 100.16(b).

In *Alaska v. Federal Subsistence Board*, the Court upheld a C&T determination for Chistochina residents to take moose upon all federal lands within Game Management Unit 12 based on: (1) the assumption, which the Court thought had support in the record, that the populations of moose which had been historically taken by Chistochina residents within a 2500 square mile area were the same populations of moose on other federal lands within the Unit; and that (2) the alternate rationale, somewhat dependent on the first, that the Federal Board was justified by a "benefit to management" in designating a C&T area for Chistochina to take those moose within all 5900 square miles of federal lands within the Board's pre-determined areas A, B and C, rather than

being required to carve out a new area for Chistochina limited to just the 2500 square miles of that community's actual historic use. *Id.* at 1096-97, 1099-1100.

On the Juneau road system, the situation is far different from what the Ninth Circuit Court believed the situation to be for moose in GMU 12. First, the salmon and trout stocks found in individual streams on the Juneau road system represent distinct stocks. Evidence of take of the same general species of fish in other districts, or even in other portions of the same districts, cannot be used to establish historic taking of the specific stocks on the Juneau road system. The Federal Board has not developed a customary and traditional use determination specific to fresh waters of Districts 11 or 15. It is extremely unlikely that any rural community would be able to provide substantial evidence of the customary and traditional use factors for any fish stock on the Juneau road system.

Second, because there has been no historic customary and traditional taking of the specific fish stocks on the Juneau road system by any Southeast rural community, a perceived "benefit to management" cannot justify including these Juneau fresh waters within the rest of Districts 11 and 15. The Juneau stocks are different stocks of fish than those which any Southeast rural community has historically taken. Moreover, federal and state fisheries management both benefit by utilizing a separate regulatory framework for these easily accessed high use waters where fish stocks must be managed through much more conservative regulations than are required in other areas of the districts. Separating out this nonrural area having no demonstrated customary and traditional use of its fish stocks by Southeast rural communities also allows the Board to carry out its responsibilities of balancing the competing purposes of ANILCA and avoiding unnecessary restrictions on nonsubsistence users. Even if the Board were to conclude that there has been customary and traditional taking of other fish stocks by some rural communities within Southeast Alaska and were to mistakenly believe that it has discretion to lump the specific fish stocks of the Juneau road system together with those other fish stocks taken within Districts 11 and 15, there would be good reason for the Board to decline asserting that perceived discretion.

Impact on Subsistence Users: Although both Southeast Alaska general federal subsistence fishery permits and the Southeast Alaska spring steelhead permits allow fishing on the Juneau road system and require reporting of harvest by stream, no federal subsistence harvests by rural residents have been reported for the freshwaters of the road system within the City and Borough of Juneau boundaries. In fact, only two sport-caught fish were reported as having been caught by rural residents of Southeast Alaska on the Juneau road system by responders to the Statewide Sport Fish Harvest Survey from 2004 through 2006. There is no evidence of customary and traditional taking of specific fish stocks for subsistence use by any rural resident in freshwaters that cross the road system within the City and Borough of Juneau boundaries. Meaningful subsistence fishing priorities for rural residents exist in streams that are closer to their respective communities. Eligible rural residents would have to travel substantial distances by boat or airplane in order to fish on Juneau roads, and such harvest would not be cost effective. Based on the lack of documentation of any subsistence use, the Federal Board should exempt the fresh waters of the Juneau City and Borough road system area from region-wide regulations by making a negative customary and traditional finding for all communities for all fish stocks in

freshwaters that cross the road system within the City and Borough of Juneau boundaries. This action would have no impact on federally qualified rural subsistence users.

Opportunity Provided by State: State regulations provide for a variety of sport fishing opportunities in freshwaters and adjacent shoreline areas, but these opportunities are more restricted than elsewhere in Southeast Alaska. Most people fish for subsistence and recreational use in marine waters. The Department's sport fisheries website for the Juneau road system lists only 15 freshwater streams and, although saltwater shoreline areas are also available for anglers to fish, fishing in saltwater for trout and Dolly Varden is more restricted and subject to lower bag limits than in other areas of Southeast Alaska. Nearly all freshwater sport fishing activity (roughly 80%) along the Juneau road system takes place in four primary streams (Cowee Creek, Montana Creek, Peterson Creek, and Fish Creek). Fish populations in these streams are relatively small. Given Juneau's relatively large human population and road access, the potential exists for over harvesting local fish resources if additional harvest opportunity is provided. Several small roadside streams are closed to sport fishing altogether, and others are closed to salmon or Dolly Varden fishing. Restrictive bag and possession limits are in effect for many species as well. Juneau roadside bag limits, possession limits, and size requirements differ in several respects from regional regulations. Bag and possession limits have been reduced for coho salmon, sockeye salmon, and Dolly Varden. In addition, cutthroat trout size limits are more conservative in the Juneau area than in other areas of Southeast Alaska. These restrictions on Dolly Varden and cutthroat trout are also effective in all salt water adjacent to the Juneau City and Borough road system to a line ¼ mile offshore.

Because Juneau is a non-rural area, residents of Juneau who historically used fish stocks in the area are ineligible to participate in the federal subsistence fishery and cannot qualify for a federal customary and traditional use determination. The existing federal subsistence regulations could lead to even more restrictions on non-federally qualified users (e.g., Juneau residents) in the non-rural area along the Juneau road system on both state and federal lands. These further restrictions -- which are unnecessary since there are no existing subsistence uses in need of continuation -- could potentially force Juneau residents to travel long distances to rural areas to participate in freshwater sport fisheries. They might also result in increased state subsistence and personal use participation in these areas. They could thus create increased competition and be detrimental to the satisfaction of subsistence needs in those rural areas. Further state restrictions along the Juneau road system would also impact opportunities for those who relocate from rural areas to Juneau and rely upon opportunity in the Juneau area to continue their fishing activities.

Conservation Issues: While conservation concerns are not a factor in the Federal Board's C&T analysis, they do provide a common sense rationale for separating the Juneau Road system and specific stocks in the area from other "remainder" areas of Southeast Alaska and for making sure that only communities with established customary and traditional use of the specific stocks in the area receive a federal subsistence priority on those stocks. The Department has continually expressed conservation issue concerns to the Federal Board about sustainability of highly accessible fisheries on the Juneau road system if these fisheries are subjected to any participation under liberal federal subsistence harvest regulations. This proposal specifically requests a Customary and Traditional determination for specific fish stocks in a specific area. Comments illustrating the Department's ongoing concerns and conservation issues were previously

presented both in writing and orally to the Federal Board for proposals FP06-31, FP08-04, and the Department's Fisheries Request for Reconsideration 06-05, these prior comments are incorporated by reference. Additional concerns are published in the Department comments for FP09-04 contained in this Federal Board meeting book

Jurisdiction Issues: According to the Department's Fish Distribution Database, the majority of fish habitat and documented fish observations in these streams are not located within federal lands. Some streams have relatively inaccessible headwaters on federal land, but they flow through State, private, and other land ownership and are not within the Tongass Forest boundary prior to crossing Juneau roads to enter marine waters. Other streams along the Juneau road system flow entirely on non-federally owned land. The federal analysis in the September 2007 Southeast Regional Advisory Council Fisheries Meeting Materials book, page 84, incorrectly states:

> Federal waters comprise all fresh waters draining into fishing District 11 and those fresh waters draining into fishing District 15 south of Chilkat Peninsula (near Haines) . . . all within exterior boundaries of the Tongass National Forest (Map 1). These waters include all streams crossed by roads connected to the City and Borough of Juneau road system.

We requested this statement be corrected before providing the 2008 analysis to the Regional Advisory Council, Federal Board, and subsistence users. We also requested that the federal maps be corrected to accurately portray the Tongass Forest boundary which specifically excludes a significant portion of the Juneau area. To date these corrections have not been made.

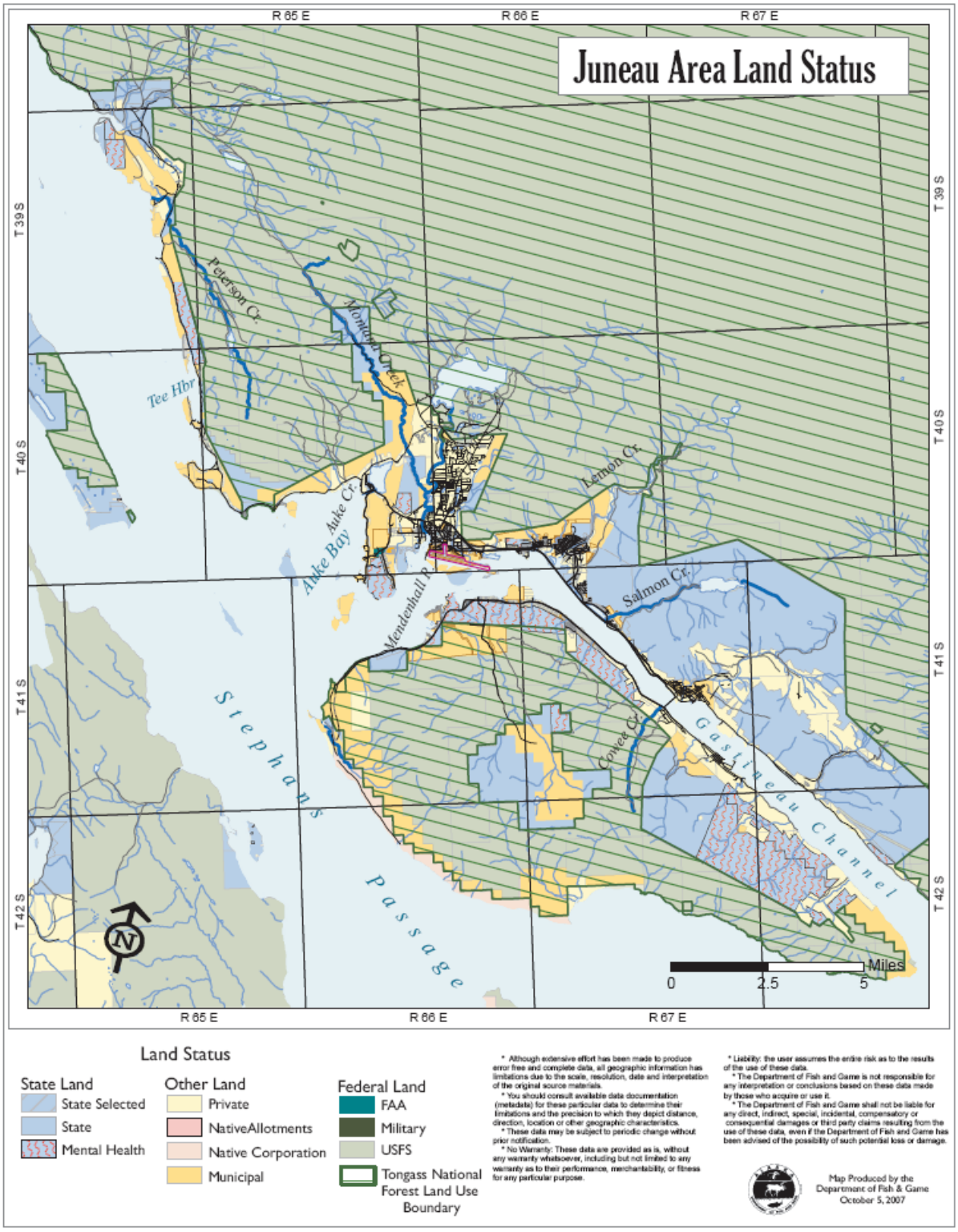
In order for rural residents to know where they can legally participate in federal subsistence fisheries, and to aid enforcement personnel in determining whether activities are legal, we request detailed land status maps showing areas and specific boundaries of waters claimed to be within federal subsistence jurisdiction and the basis for those claims. Maps provided by federal staff to date are not accurate enough to ensure federal subsistence users do not inadvertently fish from lands not claimed under federal jurisdiction. Significant portions of lands surrounding the Juneau road system are bordered by state or private lands, where there either is no federal jurisdiction or where persons cannot participate in federal subsistence fisheries while standing on non-federal lands. During the December 2007 Federal Board meeting, State of Alaska Wildlife Trooper testimony (Federal Board Transcripts December 11, 2007 pages 89-91) illustrated to the Federal Board the importance of users understanding and knowing jurisdiction and land status. This testimony explained that when an enforcement officer encounters an individual conducting an activity that is prohibited by State regulations and the individual is on State or private lands, including State-owned submerged lands, the person may be cited. A negative C&T determination for fish stocks on the Juneau road system will significantly decrease the likelihood that rural residents will be cited for violation of state law for subsistence fishing on non-federal lands along that road system.

Recommendation: Support. The current Staff Analysis provides no evidence of customary and traditional takings of any specific fish stock along the Juneau road system by any specific rural community. Based on the Board's regulatory definitions and factors, and on the September 23, 2008 Ninth Circuit Court opinion in *State of Alaska v. Federal Subsistence Board*, the current

"remainder area" C&T determination including Juneau road system fish stocks is overly broad and unsupportable. The Federal Board should correct this determination by specifically evaluating the evidence of any takings of specific fish stocks from the Juneau road system streams by specific rural communities. If it does so, the Board will find there is no substantial evidence to support a subsistence C&T priority for federally qualified residents of any rural community in Southeast Alaska or any rural community in other areas of Alaska to fish under federal regulations in these limited freshwater streams for any of these small, sensitive, and tightly restricted Juneau road system stocks.

Comments FP09-15
December 2, 2008, Page 1 of 1

FP09-15 Map 1



FP09-04 Executive Summary	
General Description	Proposal FP09-04 requests that no Federal subsistence fishing permits be issued for streams crossed by or adjacent to the Juneau road system. *Submitted by Alaska Department of Fish and Game*
Proposed Regulation	*____.27(i)(13) (ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing Sections 1C or 1D.* ***No subsistence fishing permits will be issued to take fish in any streams flowing across or adjacent to the road systems within the City and Borough boundary of Juneau.***
Southeast Regional Council Recommendation	**Oppose**
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses.
ADF&G Comments	**Support** (if the Board does not adopt FP09-15)
Written Public Comments	**None**

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-04

SOUTHEAST REGIONAL ADVISORY COUNCIL

Oppose Proposal FP09-04**.** Current regulations allow subsistence fishing on the Juneau Road system but gear is restricted by permit to rod and reel only. This management strategy provides for subsistence use of the area while providing adequate safeguards necessary for conservation of the local fisheries resources. Title VIII of ANILCA requires a subsistence priority and, if additional restrictions are determined to be necessary, the non-Federally qualified user should be restricted first.

The proponent did not adequately consider the historical use of the area adjacent to the current Juneau road system when making or supporting this proposal. The proposal would unnecessarily restrict access to local streams which have had a long history of subsistence use. Opposing this proposal would have no impact on non-Federally qualified subsistence users.

STAFF ANALYSIS
FP09-04

ISSUES

Proposal FP09-04, was submitted by Alaska Department of Fish and Game (ADF&G) and requests that no Federal subsistence fishing permits be issued for streams crossed by or adjacent to the Juneau road system.

DISCUSSION

The proponent is concerned that the streams crossed by or adjacent to the Juneau road system support small populations of fish that can be easily overexploited.

This proposal is similar to proposal FP06-31 which was submitted to remove the Federal Subsistence Board's (Board) current area-wide Federal subsistence fishing regulations for steelhead, Dolly Varden and cutthroat trout in streams crossed by or adjacent to the Juneau road system and replace them with State of Alaska sport fishing regulations. At its January 2006 meeting, the Board rejected proposal FP06-31.

Existing Federal Regulation

> *____.27(i)(13) (ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing Sections 1C or 1D.*

Proposed Federal Regulation

> *____.27(i)(13) (ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing Sections 1C or 1D.* ***No subsistence fishing permits will be issued to take fish in any streams flowing across or adjacent to the road systems within the City and Borough boundary of Juneau.***

Extent of Federal Public Waters

All fresh waters on the Juneau road system are within the exterior boundaries of the Tongass National Forest and are considered Federal public waters for the purposes of Federal Subsistence Fisheries management. For purposes of this discussion, the phrase "Federal public waters" is defined as those waters described under 50 CFR 100.3.

Customary and Traditional Use Determinations

There are no rural communities on the Juneau road system. More than 30,000 people live along the Juneau road system. Juneau is a regional hub for business and personal travel, and residents are not Federally qualified subsistence users. Juneau area streams are within Fishing Districts 15 and 11. Streams in this area are open to subsistence take of salmon by all rural Alaskans, and subsistence take of Dolly Varden, trout (including steelhead), smelt and eulachon by any rural resident of the Southeastern Alaska and Yakutat Areas.

Regulatory History

In 2000, Proposal FP01-22 requested a customary and traditional use determination for cutthroat trout, rainbow trout, and Dolly Varden/char as well as changes to methods, seasons and harvest limits for these species for rural residents of the Southeastern Alaska Area. The proposal was divided into two parts, (a) for the customary and traditional use determination and (b) for more liberal, subsistence-appropriate methods, seasons and harvest limits.

The Board supported the establishment of a Federal subsistence fishery permit and to restrict the fishery to Baranof Lake, Florence Lake, Hasselborg Lake and River, Mirror Lake, Virginia Lake, and Wilson Lake. The conditions of the permits included:

- Retention of up to 10 Dolly Varden Char with no minimum size;
- Retention of 6 cutthroat trout or rainbow trout in combination, with a size slot limit of 11" to 22" using a rod and reel with no bait;
- No season restrictions.

The Council recommended expanding the requested determination to include trout, Dolly Varden, smelt and eulachon. The Council also recommended expanding the requested determination to include all of Southeast Alaska geographically (SERAC 2000:178)[1]. The Board expanded the customary and traditional use determination to include trout, Dolly Varden, smelt, and eulachon, but only to the remainder area of the Southeastern Alaska Area (FSB 2000b:4–15). "Retention of the existing customary and traditional use determinations would maintain opportunity for eligible subsistence users while the addition of the remainder area would recognize the uses of other eligible subsistence users until a review of existing information could be conducted to further refine the relationships between communities or areas and their uses of fish" (FSB 2000a:7, cf. FSB 2000b:4–15).

In 2001, proposal FP02-36 requested all Federal waters in the Southeastern Alaska Area be closed to the taking of Dolly Varden, cutthroat and rainbow trout except by Federally qualified subsistence users, with the exception of Baranof Lake, Florence Lake, Hasselborg Lake and River, Mirror Lake, Virginia Lake and Wilson Lake. The proponent requested that this closure remain in effect until it could be proven that sport harvest would not create a biological crisis in the fish populations when coupled with the Federal subsistence fishery approved the previous year (FSB 2001:176). The proponent claimed that the restriction of Federal subsistence users to six specific lakes does not provide a rural subsistence priority. The proponent stated that the six lakes, mentioned above, are difficult to access and that this approach is not in line with subsistence harvest practices that include the opportunistic harvest of fish and wildlife species. The proponent noted,

> *When I'm deer hunting, I might be on an island and there's a beaver pond and I'll take my trout. I just felt that last year when we were allowed an increase in subsistence— and then to deny it in the vast majority of Southeast Alaska, but to still allow a two-fish sport limit showed there was fish available. And if there wasn't an increased limit for me then the sport fishery should be curtailed (SERAC 2001:90).*

At its 2001 meeting, the Board rejected the proposal and instead adopted regulatory language that allowed harvest of trout in Southeast Alaska waters under Federal jurisdiction under the terms of a Federal subsistence fishing permit. This wording did not include steelhead as "trout." It was noted that the

[1]The Board meeting book was in error regarding the Council's recommendation (FSB 2000a:5-6).

requirement of a Federal subsistence fishing permit would provide a means to obtain information on the subsistence fishing of the named species (FSB 2001:175).

Salmon/trout permits have been in place since 2002 and steelhead permits were established in 2005. Permit conditions address conservation concerns and provide for a subsistence priority for Federally qualified subsistence users. The fishery is monitored and management issues have been addressed by permit conditions such as increased minimum size limits and restricted methods and means. The conditions of permits in systems to receive special protection are determined by the local Federal fisheries manager in consultation with ADF&G (§____.27(i)(13)(xx)(A)) (SERAC 2005:290). To date, no fish have been reported harvested from the Juneau road system in the Federal subsistence harvest database (Larson 2008, pers. comm.).

In 2005, FP06-31 was submitted to remove the Board's current area-wide Federal subsistence fishing regulations for steelhead, Dolly Varden and cutthroat trout in streams on or adjacent to the Juneau road system and replace them with State of Alaska sport fishing regulations. The impetus for the proposal was conservation concerns (SEARAC 2005:304). The Board rejected the proposal and noted that:

> *Streams on or adjacent to the Juneau road system are Federal public waters to which our regulations do apply and . . . should continue to apply. There isn't any substantial evidence of a need to change the regulation in that area and there's the potential that it could be detrimental to the satisfaction of subsistence users' needs who do want to fish in [those] Federal public waters (FSB 2006:580).*

Part of the testimony included comments from Council Chair Littlefield:

> *If you look back at history, we've done these things in the past . . . and we continue to do them now. I don't know whether they did them under the table. This gentleman said he stopped when the State instituted those measures. He said he stopped when he lived in Juneau but before that he was able to participate. . . . Without an opportunity you can't have a meaningful priority (FSB 2006:578).*

In 2007, Proposal FP08-04 was submitted by ADF&G requesting that a "no Federal subsistence priority" determination be made for customary and traditional use of fish for the Juneau road system area. This is the same request as being analyzed in FP09-15. The proponent is concerned that fish stocks in Juneau area streams could be impacted if even a few Federally qualified rural residents choose to travel to Juneau and subsistence fish on the Juneau road system (FSB 2007a:175). The Council stated that there was "no information presented that indicated that subsistence fishing in the Juneau area waters was inappropriate. . . . No need was seen to make a location-specific customary and traditional use determination for the Juneau road system" (FSB 2007a:174). At its December 2007 meeting, the Board agreed with the Council and rejected the proposal.

Current Events Involving Species

State sport fish regulations for steelhead are intended to be conservative due to the high actual and potential fishing effort and limited stock assessment information on local populations. Sport anglers have been actively fishing for steelhead in the Juneau area systems, but few have been harvested since the 36-inch minimum size limit was put in the sport regulations in 1994. Steelhead longer than 36 inches were rare in Peterson Creek in years 1989 to 1991 (Harding and Jones 1991 and 1992). As a result, mortality of steelhead has mostly been limited to the hook and release mortality associated with sport fishing in freshwater. The State does not require sport fishers to report their steelhead harvests nor

do they have an in-season harvest monitoring program for freshwater fisheries. Sport Fish Division's, annual, post-season, statewide harvest mail survey results for years 1994 to 1999 estimated the annual harvests of steelhead in the Juneau area at 0 to 38 fish in freshwater and 0 to 36 fish in saltwater. From 1994 to 1999, 8 steelhead were estimated to have been harvested from Peterson Creek (all in 1997) and the number of anglers fishing Peterson Creek averaged 422 anglers per year with a range of 336 to 482. It is likely that the spring run steelhead originating from Juneau area streams are harvested incidentally in the commercial gillnet and seine fisheries targeting summer runs of sockeye, pink, chum, and coho salmon in northern inside waters of Southeastern Alaska. For instance, during the years 2002 to 2004, commercial drift gillnet fisheries in Taku Inlet and Lynn Canal has reported a harvest of 27, 0, and 0 steelhead, respectively for the three years. Harvests of steelhead have not been reported in seine fisheries. Restrictive sport regulations implemented by the State in 1994 has not resulted in an obvious increase in run sizes. However, the existing sport fishery is not raising conservation concerns for steelhead in Juneau roadside systems.

The special conditions on the Federal steelhead permit of a 32" minimum size limit, and rod and reel without bait gear restriction, has likely discouraged participation by Federally qualified subsistence users. The local Federal fisheries manager took direct and effective steps to protect salmon, steelhead, char, and trout populations and provide for a meaningful subsistence priority as mandated by ANILCA. Special conditions on the Federal permits say that fishing regulations are the same as State sport fishing regulations with the exception of a 32" minimum size limit for steelhead (the State has a 36" minimum size limit) and 11" size limit for trout (the State has a 14" minimum size limit). It appears that size limits and distance traveled from rural areas may dissuade subsistence fishing on the Juneau road system.

The 32-inch minimum size limit protects stocks from over-fishing yet provides a subsistence opportunity since sport fishers have a 36-inch minimum size limit. Again, the steelhead stocks on the Juneau road system appear healthy, the habitat is relatively intact, and exploitation rate appears to be relatively low. The 32-inch minimum size limit is a conservative step to limit exploitation in the unlikely case that Federal subsistence users actively start fishing Juneau area streams.

Over 60% of the adult steelhead returning to Peterson Creek would be too small to harvest under a 32-inch minimum size limit based on data collected by ADF&G's weir project in 1989, 1990, and 1991 (Harding and Jones 1990, 1991, and 1992). Based on the length and age data provided in Harding and Jones (1991, 1992), a 32-inch minimum size limit would protect about 80% of the first time spawners from being harvested, plus 60% of the second time spawners and almost 30% of the third time spawners (**Figure 1**). Note that the actual percent harvested by Federal subsistence permit holders depends on whether any subsistence fishing occurs and if any fish are taken.

Regarding trout and Dolly Varden char, there is little specific information on harvests, abundance, or harvestable surplus of these species in the lakes or streams on or adjacent to the Juneau road system. The State of Alaska has used a conservative management approach to maintain healthy populations in these small road accessible systems: the small urban streams are closed to fishing (Auke, Bear, Duck, Jordan, Steep, Switzer, and Vanderbilt Creeks); fishing is closed for Dolly Varden in Mendenhall and Auke Lakes; cutthroat and rainbow trout must be between 14 inches and 22 inches long to be harvested; and daily and possession limits are 2 cutthroat and rainbow trout (in combination) and 2 Dolly Varden.

There has been no reported harvest of fish on the Juneau road system from Federal permits. Permit restrictions include a prohibition on the use of nets on the Juneau road system.

There is little use by Federally qualified subsistence users in the Juneau area. However, because of the road access to these relatively small drainages, they warrant special protection. The Federal subsistence

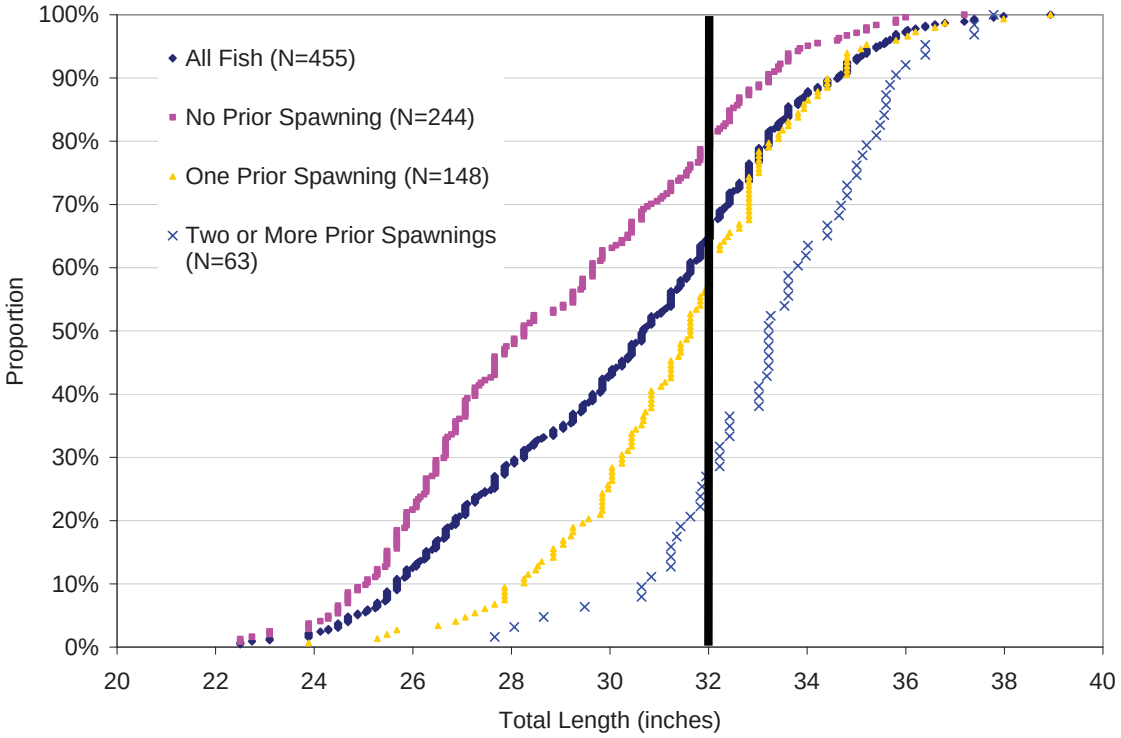


Figure 1. Cumulative proportion of adult steelhead sampled by length and spawning history at the Peterson Creek weir in 1991 (From data provided in Harding and Jones (1991 and 1992) and the Total Length (mm) = 26.93661 + 1.008434 * Fork Length (mm) conversion.).

fishing permits for 2008 applies the same closed waters and bait restrictions as the State and requires the 11-inch minimum size limit for cutthroat and rainbow trout that the State has in region wide regulations so that trout have the ability to spawn at least once before they may potentially be harvested. The 11-inch minimum size for trout and more liberal household harvest limits are intended to provide Federal users with an increased subsistence opportunity for trout and char.

Harvest History

The main steelhead system on the Juneau road system is Peterson Creek; however, steelhead have been reported from Cowee Creek, Eagle Creek, Windfall Creek, Montana Creek, and Fish Creek (Douglas Island). An ADF&G weir project on Peterson Creek estimated escapements of 179-222 steelhead annually from 1989 to 1991.

To date, no fish have been harvested on Federal subsistence fishing permits in Juneau roadside systems since the fishery's inception (Larson 2008, pers. comm.).

Limited data are available from the Statewide Sport Fish Harvest Survey, a mail out survey conducted by ADF&G. The survey was designed to provide statewide and regional estimates of effort and harvest of fish by sport fish license holders using sport fish gear under sport fish regulations. The Statewide Sport Fish Harvest Survey is not designed to provide detailed harvest and effort estimates for individual streams. From 1996 to 2006 there were 107 responses to the statewide harvest survey from rural residents of Southeast Alaska who reported sport fishing in Districts 11 and 15. Of these 107 entries, 32 fished in

fresh waters. A further examination of which streams were fished found that 24 of these entries were for waters crossed by the Juneau road system, including fishers from the communities of Skagway, Sitka, Wrangell, Pelican, Haines, and Gustavus. (A single survey respondent may have provided more than one of the 107 entries in survey results.) Although these harvests were reported under the Statewide Sport Fish Harvest Survey, the intent and purpose of these harvests is unknown. It is possible that the fishers were harvesting for subsistence under sport fishing regulations in the absence of subsistence regulations.

Effects of the Proposal

If this proposal were implemented, there would be no opportunity for Federally qualified subsistence users to harvest fish in Federal public waters on the Juneau road system. This could be detrimental to the satisfaction of subsistence needs if a Federally qualified subsistence user desires to harvest fish on the Juneau road system, under Federal regulation. Known conservation concerns for steelhead and trout on the Juneau Road system are addressed by restrictive permit conditions. Additional restrictions could be placed on the permit under the local Federal fisheries manager's authority if additional conservation concerns arise.

OSM CONCLUSION

Oppose Proposal FP09-04.

Justification

Adopting the proposed regulation change would not provide subsistence users with the subsistence priority as required in Section 804 of ANILCA Title VIII, and could be detrimental to the satisfaction of their subsistence needs. Known conservation concerns for steelhead and trout on the Juneau Road system are addressed by restrictive permit conditions. Additional restrictions could be placed on the permit under the local Federal fisheries manager's authority if additional conservation concerns arise.

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INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-04

The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses.

Alaska Department of Fish and Game
Draft Comments to the Federal Subsistence Board

FP09-04 Juneau Road System – No Federal Subsistence Permits

Introduction: This proposal disallows issuance of federal subsistence permits for streams crossing the Juneau road system within the City/Borough of Juneau[1] based on concern for specific relatively small and vulnerable fish stocks. These streams constitute a very small portion (less than 10%) of the freshwater fisheries in Districts 11 and 15 of Southeast Alaska. Although both Southeast Alaska general federal subsistence fishery permits and the Southeast Alaska spring steelhead permits allow fishing on the Juneau road system and require reporting of harvest by stream, no federal subsistence harvests by rural residents have been reported for the freshwaters of the road system within the City and Borough of Juneau boundaries. If any federal subsistence fishing were to occur, these fish stocks could be impacted before evidence of unsustainable harvests would be available. In addition, testimony from the public and Council members at the October 2008 Southeast Regional Advisory Council meeting expressed concerns about restricting non-federally qualified uses if fishing pressure on the Juneau road system increased. Public testimony requested that the Regional Advisory Council not approve regulations which would prohibit residents of Juneau from participating in the local fisheries. Adoption of this proposal would prevent potential fishery restrictions by removing the issuance of federal subsistence permits on the Juneau road system and preventing unsustainable future fishing pressure by non-local residents from developing. FP09-04 is similar to and consistent with federal regulations previously adopted in the Petersburg, Wrangell, and Sitka area under §_.27(i)(13)(ix) prohibiting issuance of permits for the use of nets.

Impact on Subsistence Users: No prior harvests by rural residents have been documented for subsistence use in fresh waters of the road system within the Juneau City/Borough boundary. There is no evidence of a customary and traditional use of fish stocks for subsistence by any rural resident in fresh waters that cross the road system within the Juneau City/Borough boundary. Most Juneau area fishing occurs within marine waters, just as most fishing throughout Southeast Alaska occurs in marine waters -- outside of claimed federal waters. Meaningful subsistence fishing priorities for rural residents exist in streams that are closer to their respective communities. Eligible rural residents would have to travel substantial distances by boat or airplane in order to fish on the Juneau road system. Though daily air and ferry service exists, the Juneau area is not near or reasonably accessible to rural residents of Southeast Alaska for purposes of subsistence or sport fishing. In fact, only two sport-caught fish were reported as having been caught by rural residents of Southeast Alaska on the Juneau road system by responders to the Statewide Sport Fish Harvest Survey from 2004 through 2006. No evidence supports a contention that subsistence opportunity along the Juneau road system is utilized by rural residents living outside the Juneau City/Borough boundary.

Opportunity Provided by State: State regulations provide for a variety of sport fishing opportunities in fresh waters and adjacent saltwater shoreline areas of the Juneau road system, but these opportunities are more restricted than elsewhere in Southeast Alaska. The Alaska

[1] The Juneau area has been determined a non-rural area by the Federal Subsistence Board (Federal Board) according to federal regulations and a non-subsistence use area by the State according to specific regulatory criteria.

Department of Fish and Game (Department) lists only 15 freshwater streams along the Juneau road system where anglers may fish. Although salt water shoreline areas are also available, fishing even in saltwater in the area for trout and Dolly Varden is more restricted and subject to lower bag limits than in other areas of Southeast Alaska. Nearly all freshwater sport fishing activity (approximately 80%) along the Juneau road system takes place in four primary streams (Cowee Creek, Montana Creek, Peterson Creek, and Fish Creek). The fish populations in these streams are relatively small. Several small roadside streams in the area are closed to sport fishing altogether, and others are closed to salmon or Dolly Varden fishing. Restrictive bag and possession limits are in effect for many species. Juneau roadside bag and possession limits and size requirements differ in several respects from regional regulations and are more restrictive. Bag and possession limits have been reduced for coho salmon, sockeye salmon, and Dolly Varden. Cutthroat trout size limits are also more restrictive than regional regulations.

Conservation Issues: Two dozen Juneau area streams support small populations of fish and can be easily accessed from the local road system. Seven of the streams have been closed to all fishing and four streams have salmon retention prohibitions in order to assure continued sustainability. All other streams open to fishing are conservatively managed for high use and have severely restricted methods and means, size limits, harvest limits, fishing schedules (e.g., no bait, seasonal closures, slot limits, and species prohibitions). Existing harvest levels can only continue if effort does not increase substantially, most fishers practice non-retention, and the streams are conservatively managed.

The Department has continually expressed concerns about sustainability within highly accessible, liberal-harvest federal subsistence fisheries on the Juneau road system. The federal steelhead 32" size limit in this area allows a harvest rate that is unsustainable. The Federal Staff Analysis for proposal FP 06-31 at the January 2006 Federal Subsistence Board meeting (pages 395-400 in the meeting materials book) provided no biological justification for the 32" size limit other than to state "the size limit was set less than the state sport fish limit of 36" to give federally qualified users a subsistence priority."[2] The State 36" size limit and other State regulations were adopted to rebuild depleted stocks and are based on biological standards to achieve a sustainable harvest rate. Likewise, the sport fishing cutthroat regional minimum size limit of 11" in length was established to protect about 60% of trout populations until they can spawn at least once. The regulations in the Juneau area are even more restrictive; they impose a 14" minimum size length to allow all female cutthroat trout to spawn at least one time. In contrast, the federal regulations applicable to the area allow retention of cutthroat trout less than 14" in length, which allows harvest of juvenile cutthroat trout in areas of high use.

The State fishing regulations in place "near or within highly populated areas of Alaska for fish stocks exposed to elevated exploitation pressures" were developed to conserve and rebuild a variety of fish stocks. The current regulations in place that protect such stocks were successfully developed through utilizing the most current scientific knowledge and management methods. When all of the required data needed to manage a fishery are not available or if a fish stock has been identified as potentially over-exploited, fragile, or of concern, the fisheries are managed conservatively through restrictive regulations. In the absence of critical information about stock

[2] This reasoning fails to recognize that a federal regulation that is an exact duplicate of a State regulation already provides a subsistence priority because in times of shortage non-federal users are restricted first.

sizes and harvest rates, the State regulations should be used by the Federal Board to help ensure sustainability of the resource. The federal regulations could jeopardize fish stocks because harvest limits are excessive for the size of streams and damage would not be evident until after it is reported. The federal subsistence permit appears to be the foundation for federal stock conservation, but its reporting requirements may be "too little, too late" for small stocks.

Under the current federal subsistence fishing regulations, these small Juneau area fish stocks could be impacted if even a few rural residents chose to travel to Juneau to subsistence fish. These federal regulations apply to the area where non-federally qualified Juneau residents and other users are subject to State sport fishing regulations. The current federal regulations provide an exemption from State sport fish license requirements, allow liberalized gear, and allow liberalized size limits. In contrast to other areas in Districts 11 and 15 open to subsistence fishing under the federal regulations, streams that cross the road system within the City/Borough of Juneau are relatively accessible to Juneau visitors, support small fish stocks, and receive increasing pressure from a large Juneau resident population, thus necessitating increased restrictions on size, gear, and limits in order to assure sustainability of those stocks while also retaining an opportunity for residents of the area to participate in fishing.[3]

Jurisdiction Issues: According to the Department's Fish Distribution Database, the majority of fish habitat and documented fish observations in these streams are not located within federal land. Some streams have relatively inaccessible headwaters on federal land, but they flow through State, private, and other land ownership to marine waters. Most of the lengths of these streams also are not within the Tongass Forest boundary. Other streams along the Juneau road system flow entirely on non-federally owned land. However, federal analysis (i.e., December 2007 Federal Subsistence Board Meeting Materials book page 181) continues to incorrectly and over-broadly claim:

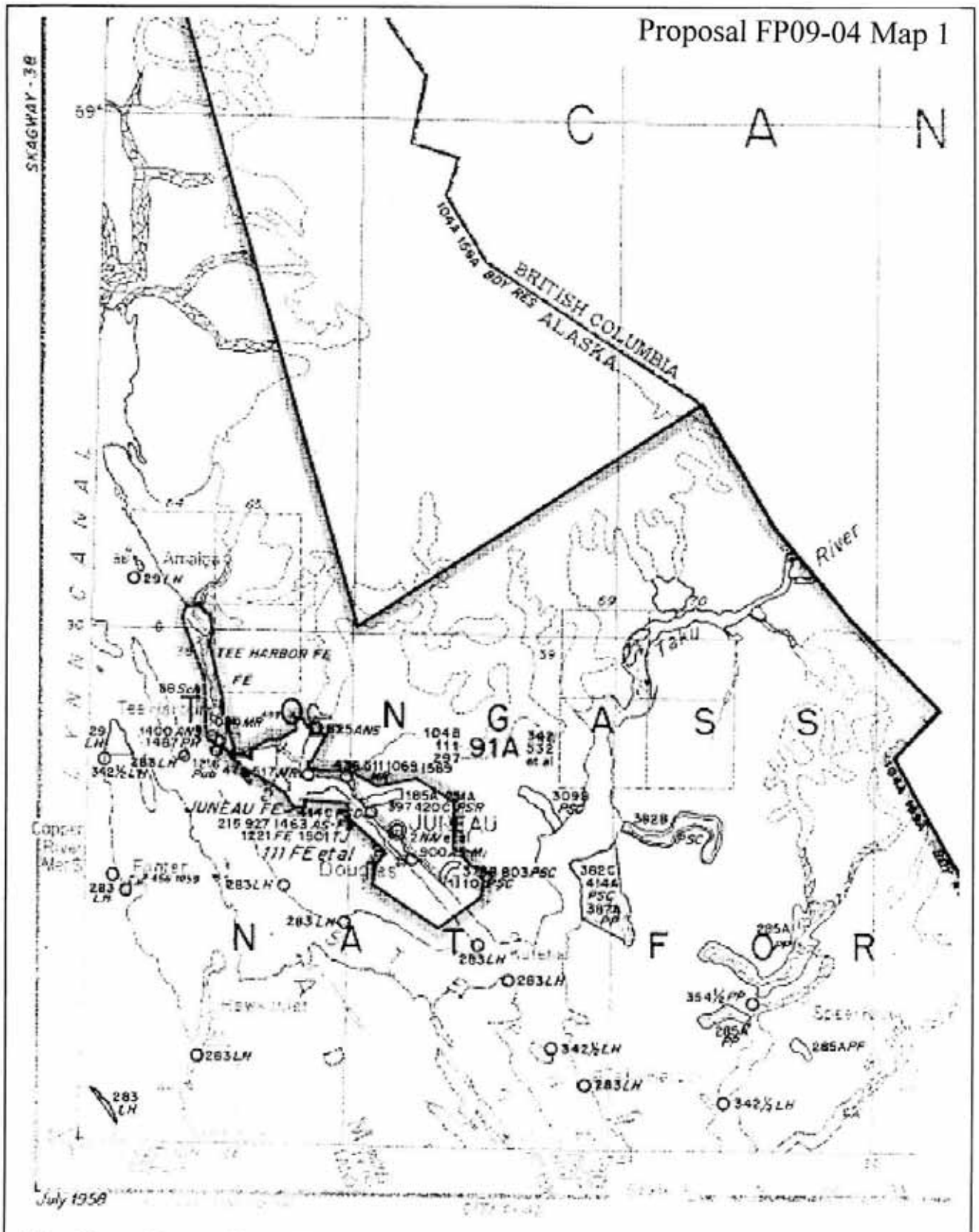
> Federal public waters comprise all fresh waters draining into fishing District 11 and those fresh waters draining into fishing District 15 south of the Chilkat Peninsula (near Haines), but also including the eastern side of Chilkoot Inlet north to Skagway, all within the exterior boundaries of the Tongass National Forest (Map 1). These waters include all streams crossed by roads connected to the City and Borough of Juneau road system.

In order for rural residents and enforcement personnel to know where they can legally participate in federal subsistence fisheries, we request detailed land status maps showing areas and specific boundaries of waters claimed to be within federal subsistence jurisdiction and the basis for those claims. Maps provided by federal staff to date are not accurate enough to ensure federal subsistence users do not inadvertently fish from lands not under federal jurisdiction. Significant portions of federal lands surrounding the Juneau road system are bordered by state or private lands, where there is either no federal jurisdiction or federally qualified subsistence fishers cannot participate in federal subsistence fisheries while standing on non-federal lands. During the December 2007 Federal Board meeting, State of Alaska Wildlife Trooper testimony illustrated to the Federal Board the importance of users understanding and knowing jurisdiction

[3] Comments illustrating the Department's ongoing concerns and conservation issues have previously been presented both in writing and orally to the Federal Board for proposals FP06-31, FP08-04, and the Department's Fisheries Request for Reconsideration 06-05, these prior comments are incorporated by reference.

and land status. This testimony explained that when an enforcement officer encounters an individual conducting an activity that is prohibited by State regulations on State or private lands, including State-owned submerged lands, the person will likely be cited. Closing the Juneau road system area to the issuance of federal subsistence fishing permits will significantly decrease the likelihood that rural residents will be cited for violation of state law for subsistence fishing on non-federal lands along the Juneau road system.

Recommendation: Support (if the Board fails to adopt FP09-15). This action is consistent with the previously adopted federal regulation prohibiting issuance of permits for net fishing in the Petersburg, Wrangell, and Sitka road system areas (§_.27(i)(13)(ix)). The Federal Board should exempt the current Juneau City and Borough boundary area from region-wide regulations by not allowing subsistence permits to be issued for fresh waters accessible through the road system. This action would not have an impact on federally qualified rural subsistence users, who would retain a meaningful preference for the harvest of species found along the Juneau road system in other more reasonably accessible locations near their communities and primary residences and even in other portions of Districts 11 and 15; but protection would be afforded to the specific small and vulnerable stocks found along the Juneau road system. This proposal will be unnecessary and would have no effect if the Board accepts FP09-15.



United States. Bureau of Land Management. 1958. Juneau: Section no. 37 of Alaska Series (1:500,000) *in:* Alaska federal land withdrawals and reservations. Washington, D.C. 60 map atlas.

FP09-05 Executive Summary	
General Description	Proposal FP09-05 seeks to close the Federal public waters in the Makhnati Island area near Sitka to the harvest of herring and herring spawn except for subsistence harvests by Federally qualified subsistence users. *Submitted by the Sitka Tribe of Alaska*
Proposed Regulation	***§___.27(i)(13)(xxii) The Federal public waters in the Makhnati Island area, as defined in 36 CFR 242.3(b)(5) and 50 CFR §100.3(b)(5) are closed to the harvest of herring and herring spawn except for subsistence harvests by Federally qualified subsistence users.***
Southeast Regional Council Recommendation	**Support**
Interagency Staff Committee Comments	See comments following the analysis.
ADF&G Comments	**Oppose**
Written Public Comments	**2 Oppose**

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-05

SOUTHEAST REGIONAL ADVISORY COUNCIL

Support Proposal FP09-05**.** The Council determined that there was significant new information presented at this meeting by the Sitka Tribe that was not available to the Council when this issue was previously discussed in 2007. This new information indicated to the Council that it was necessary to close the waters of the Makhnati Island area to non-subsistence uses for both the conservation of herring in Sitka Sound and to protect the continuation of subsistence uses of herring spawn. Analysis of the chemical composition of herring otoliths by Sitka Tribe biologist indicate that herring spawning in the Sitka Sound management area are actually composed of a Sitka Sound spawning stock and a separate spawning stock in Salisbury Sound. Additional analysis of available data show the numbers of herring spawning in these areas are actually decreasing while the increasing biomass is due to increases in weight of each fish. In addition, recent fishing patterns have contributed to changing the primary spawning areas to locations where larvae may not survive. From 1978 to 2001, 100 percent of age four fish were mature whereas now many of age six fish are not mature. Increasing age at maturity and slower growth rates are troubling signs of poor stock health.

The amounts necessary for subsistence have not been met in 2001, 2005, 2007 and 2008 under the State's management regime. The commercial sac roe fishery, including the test fishing program, disrupts herring schools that are staging to spawn in customary and traditional areas, including Makhnati Island. Herring have spawned within these Federal waters 34 out of 44 years or 77 percent of the time. Herring spawning site fidelity for returning spawners is not as highly variable as previously reported. Herring have spawned in the Middle Island, Kasiana Island area 43 out of 44 years or 98 percent of the time. However localized stock depletion has occurred due to disturbance of these fish and subsequently subsistence needs are not being met.

The Council concluded that closing the Makhnati Island area is the only means available to the Council to provide a meaningful subsistence priority for the waters under Federal jurisdiction. This action will have no effect on non-subsistence users as the area under consideration is a very small fraction of the total herring spawning area within Sitka Sound. However, if the area remains open to non-federally qualified use, there may be detrimental effects on subsistence users.

STAFF ANALYSIS
FP09-05

ISSUES

Proposal FP09-05 was submitted by the Sitka Tribe of Alaska (STA) and seeks to close the Federal public waters in the Makhnati Island area near Sitka (**Maps 1 and 2)** to the harvest of herring and herring spawn except for subsistence harvests by Federally qualified subsistence users.

DISCUSSION

The proponent believes a closure of these waters is necessary to ensure the continuation of subsistence uses by Federally qualified subsistence users and to provide a meaningful preference for qualified subsistence users of herring. The proponent states that under the current State management plan which has been in effect since 2002, the commercial herring fishery is to be dispersed if the local fisheries manager believes it is necessary to ensure that subsistence users have a reasonable opportunity to harvest the amount of herring spawn necessary for subsistence uses. The proponent states that despite this regulation, subsistence users were unable to harvest the amount of herring spawn necessary for subsistence uses in 2005 and 2007. In these same years, the commercial fishery has met its quota.

The proponent believes that the commercial fishing effort in and near subsistence herring spawn harvest sites cannot be overstated. The proponent believes that herring have not been consistently spawning in traditional subsistence areas. The proponent states that traditional ecological knowledge and local observation support that the commercial harvest of herring displaces subsistence users from traditional harvesting sites, disrupts herring spawning such that good quality deposition of herring eggs does not take place at traditional sites, causes herring to spawn away from subsistence sites, and may seriously reduce the biomass of spawning herring upon which subsistence users depend.

The proponent also believes that a closure is necessary to ensure subsistence uses can continue in the Federal public waters because in-season management to protect subsistence uses is virtually impossible because the commercial fishery precedes the subsistence fishery so that by the time subsistence users realize they are unable to harvest herring eggs, the commercial fishery is already completed.

Existing Federal Regulation

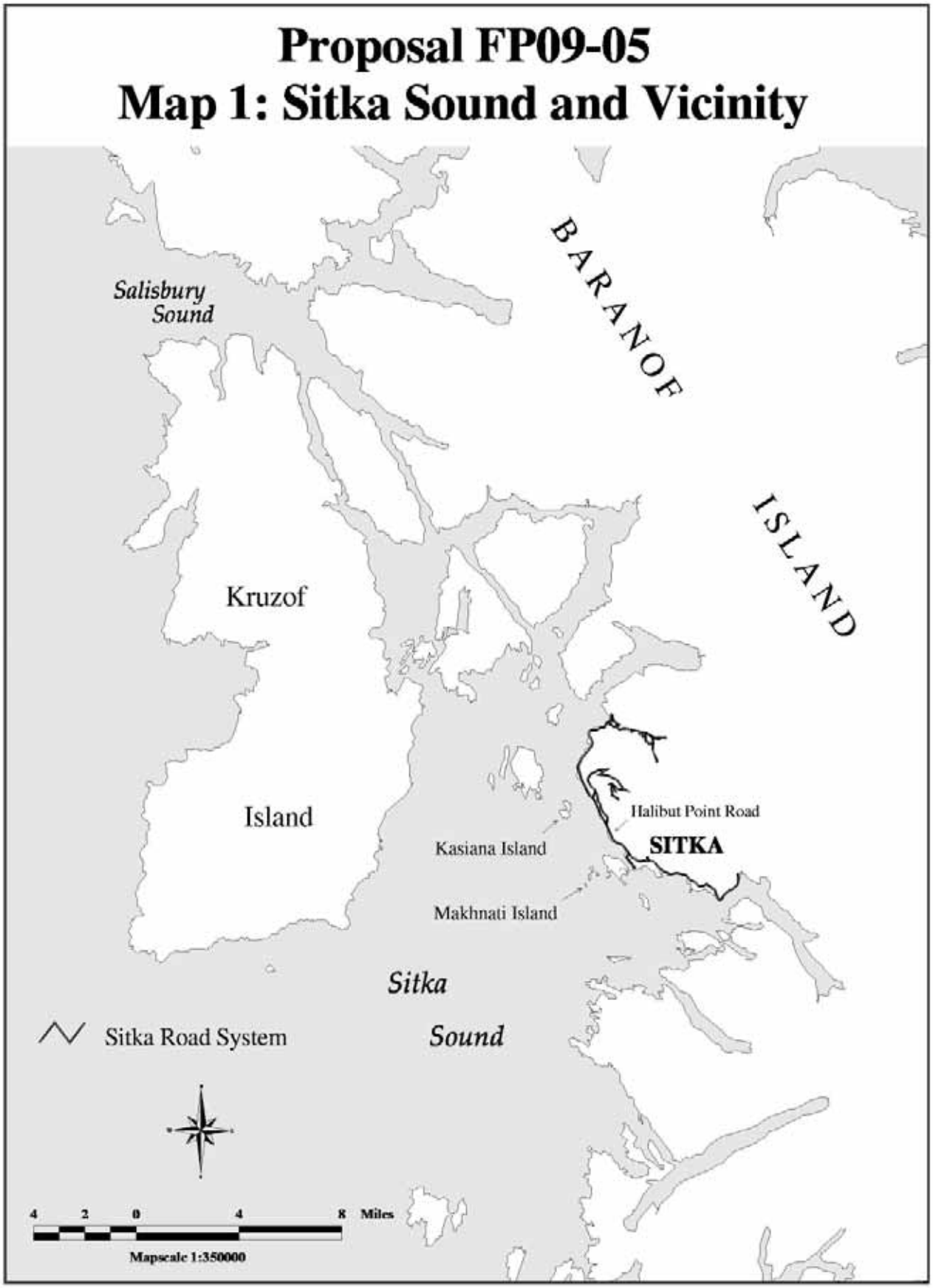
Under existing Federal regulations, all rural residents of Alaska are eligible to harvest herring and herring spawn from Federal public waters in Southeast Alaska. There is no season or harvest limit in regulation.

Proposed Federal Regulation

> ***§___.27(i)(13)(xxii) The Federal public waters in the Makhnati Island area, as defined in 36 CFR 242.3(b)(5) and 50 CFR §100.3(b)(5) are closed to the harvest of herring and herring spawn except for subsistence harvests by Federally qualified subsistence users.***

Extent of Federal Public Waters

The Federal subsistence program has jurisdiction over the waters near Makhnati Island as described in 36 CFR 242.3(b)(5) and 50 CFR §100.3(b)(5). The Makhnati area was described in two Executive Orders,


Proposal FP09-05
Map 1: Sitka Sound and Vicinity
Salisbury Sound
BARANOF
ISLAND
Kruzof
Island
Halibut Point Road
SITKA
Kasiana Island
Makhnati Island
Sitka
Sound
Sitka Road System
4 2 0 4 8 Miles
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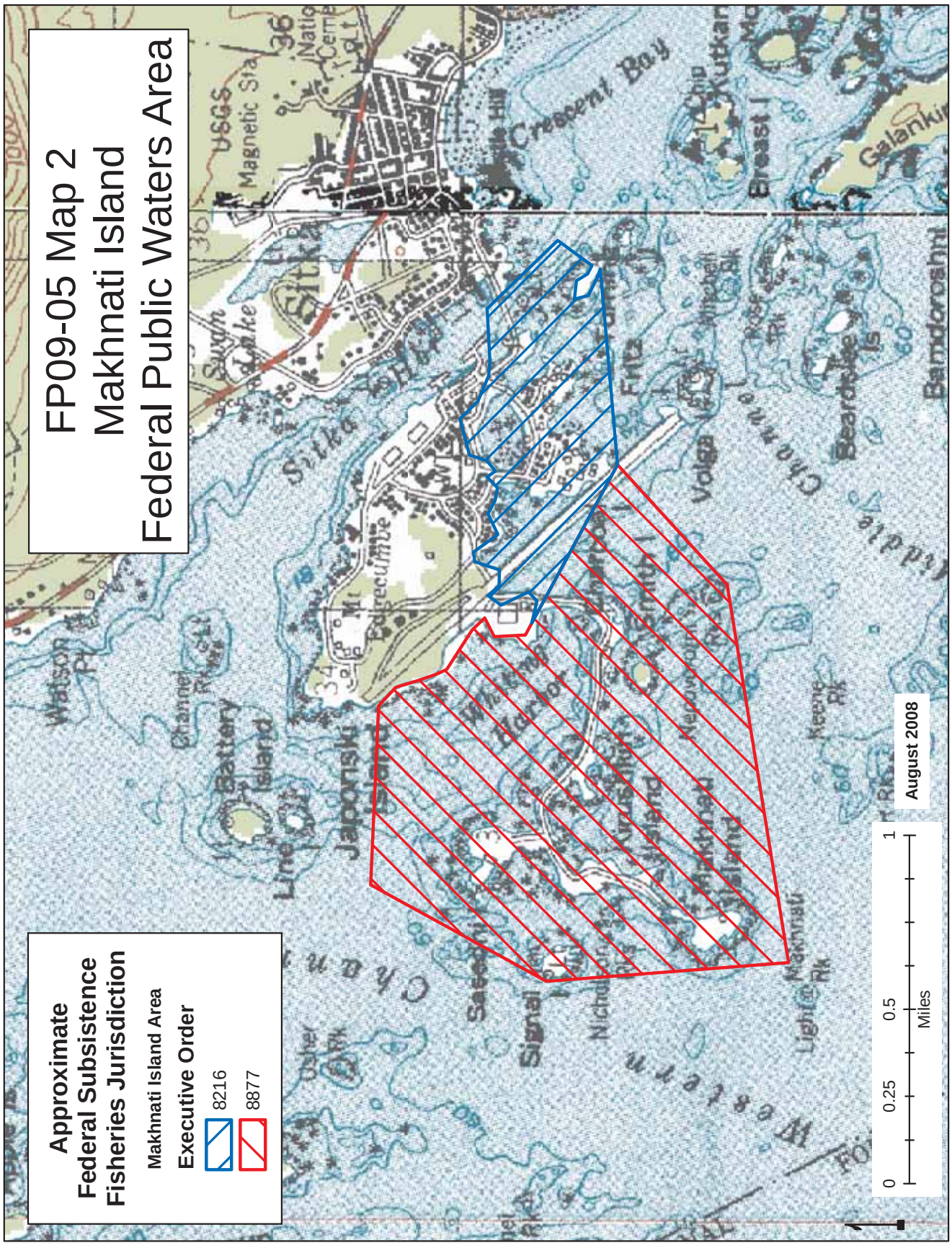

FP09-05 Map 2
Makhnati Island
Federal Public Waters Area
Approximate
Federal Subsistence
Fisheries Jurisdiction
Makhnati Island Area
Executive Order
8216
8877
August 2008
0
0.25
0.5
1
Miles

8817 (approximately 610 acres) and 8216 (approximately 190 acres) for a total of approximately 800 acres **(Map 2)**. The Makhnati Island area is described in regulation as follows:

> Southeastern Alaska—Makhnati Island Area: Land and waters beginning at the southern point of Fruit Island, 57°21′35″ north latitude, 135°21′07″ west longitude as shown on United States Coast and Geodetic Survey Chart No. 8244, May 21, 1941; from the point of beginning, by metes and bounds; S. 58° W., 2500 feet, to the southern point of Nepovorotni Rocks; S. 83° W., 5600 feet, on a line passing through the southern point of a small island lying about 150 feet south of Makhnati Island; N. 6° W., 4200 feet, on a line passing through the western point of a small island lying about 150 feet west of Makhnati Island, to the northwestern point of Signal Island; N. 24° E., 3000 feet, to a point, 57°03′15″ north latitude, 134°23′07″ west longitude; East, 2900 feet, to a point in course No. 45 in meanders of U.S. Survey No. 1496, on west side of Japonski Island; southeasterly, with the meanders of Japonski Island, U.S. Survey No. 1496 to angle point No. 35, on the southwestern point of Japonski Island; S. 60° E., 3300 feet, along the boundary line of Naval reservation described in Executive order No. 8216, July 25, 1939, to the point beginning, and that part of Sitka Bay lying south of Japonski Island and west of the main channel, but not including Aleutski Island as revoked in Public Land Order 925, October 27, 1953, described by meets and bounds as follows: Beginning at the southeast point of Japonski Island at angle point No. 7 of the meanders of U.S. Survey No. 1496; thence east approximately 12.00 chains to the center of the main channel; thence S. 45° E. along the main channel approximately 20.00 chains; thence S. 45° W. approximately 9.00 chains to the southeastern point of Aleutski Island; thence S. 79° W. approximately 40.00 chains to the southern point of Fruit Island; thence N. 60° W. approximately 60.00 chains to the southwestern point of Japonski Island at angle point No. 35 of the U.S. Survey No 1496; thence easterly with the meanders of Japonski Island to the point of beginning including Charcoal, Harbor, Alice, Love, Fruit islands and a number of smaller unnamed islands.

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 50 CFR 100.3.

Customary and Traditional Use Determinations

> *Sec. 100.24 Customary and traditional use determinations.*
>
> *(a) The Federal Subsistence Board has determined that rural Alaska residents of the listed communities, areas, and individuals have customary and traditional use of the specified species on Federal public land in the specified areas. Persons granted individual customary and traditional use determinations will be notified in writing by the Board. The Fish & Wildlife Service and the local NPS Superintendent will maintain the list of individuals having customary and traditional use on National Parks and Monuments. A copy of the list is available upon request. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence priority for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.*

The Board has not addressed a customary and traditional use determination for herring in this area; therefore, all rural residents of Alaska may harvest herring and herring spawn in this area.

Regulatory History

Federal Regulatory History

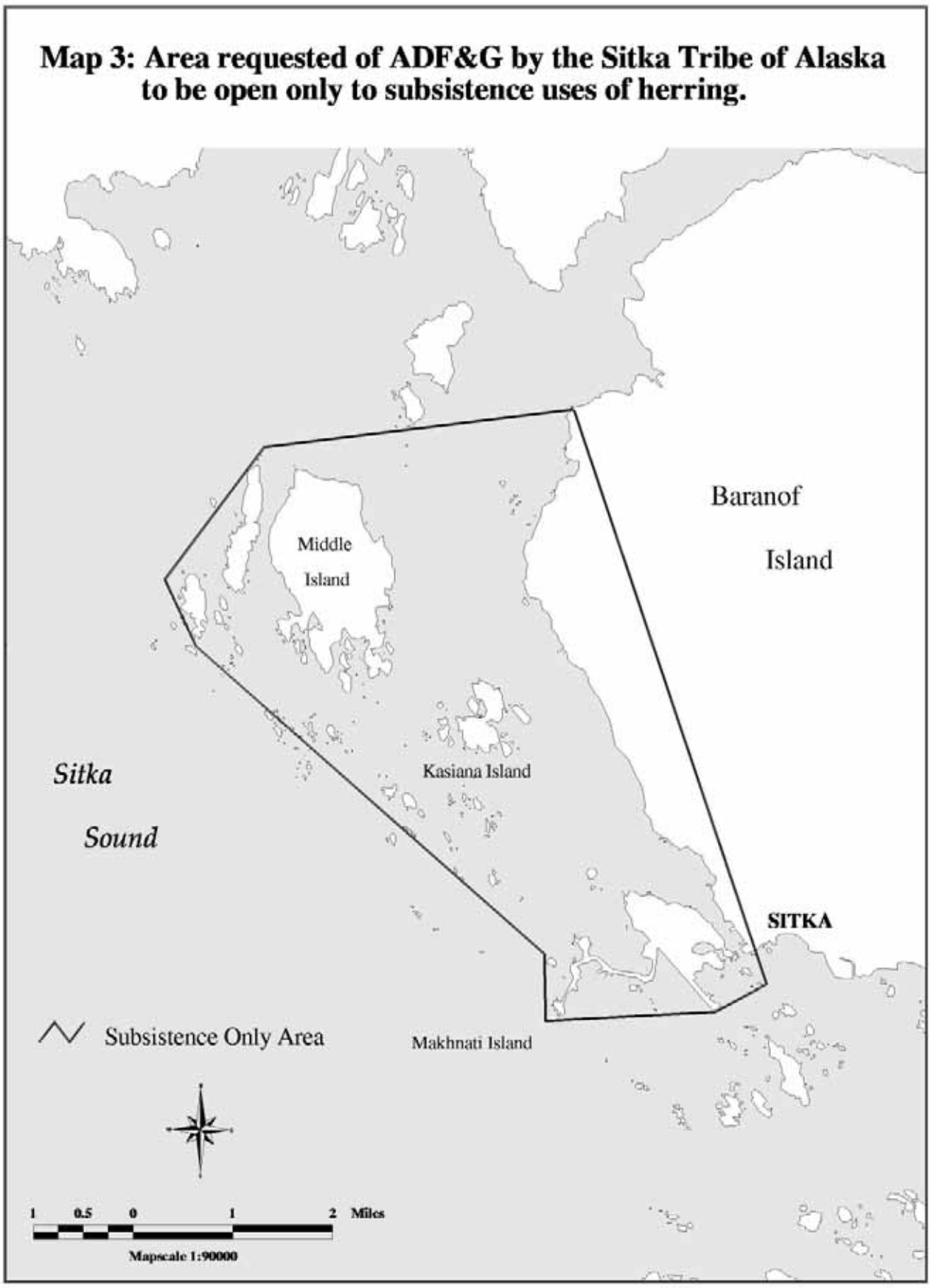
In January 2007, the Board considered two proposals regarding the subsistence herring egg harvest in the Makhnati Federal public waters near Sitka (FSB 2007a). FP07-18 was submitted by the Southeast Alaska Subsistence Regional Advisory Council (Council) and FP07-19 was submitted by the STA. Both proposals sought to close the Makhnati Federal public waters to commercial herring fishing during the months of March and April. The proponents believed that the closure would be a constructive step toward ensuring that subsistence needs for herring and herring spawn would be met. The Board deferred action on proposal FP07-18 and took no action on FP07-19 (FSB 2007a). The Board asked the Council to form a subcommittee to recommend criteria which would govern decisions to open or close the commercial herring fishery in the Makhnati Federal public waters and possible alternate solutions. The subcommittee did not reach consensus on all recommendations. However their report was presented to the Council in September, 2007. The Council accepted the report and distributed it to the public. At their September meeting, the Council developed closure language for the Makhnati Island area based on the subcommittee report. The Council recommended the closure of Federal public waters near Makhnati Island to non-Federally qualified subsistence users when the forecast herring biomass is less than 35,000 tons for the Sitka Sound area or when Amounts Necessary for Subsistence (ANS) are not met for two consecutive years (SESRAC 2007). In comparison, the State of Alaska's herring management plan uses a threshold level of 20,000 tons, below which no commercial sac roe harvest would occur. The Board considered the Council's recommendation during a December 2007 public meeting as part of proposal FP08-18. Following considerable oral testimony from Tribal representatives, professional managers and staff, the Board rejected the Council's recommendation. The Board's rationale for rejection was that there was not substantial evidence of a conservation concern or a need for a closure to insure the continuance of subsistence uses (FSB 2007b).

On March 25, 2008 a letter was received by the Federal Subsistence Board from the STA requesting the following: The Federal public waters in the Makhnati Island area, as defined in 36 CFR 242.3(b)(5) and 50 CFR §100.3(b)(5) are closed to the harvest of herring and herring spawn except for subsistence harvests by Federally qualified subsistence users from March 24, 2008 through April 30, 2008. The Federal Subsistence Board responded by letter dated April 3, 2008. The Board informed the STA that the commercial fishery was completed prior to the Board action and consequently the matter was made moot.

Also on March 25, 2008 a letter was received by the Secretaries of Agriculture and the Interior from STA requesting that they impose extra territorial jurisdiction authority to close the commercial herring fishery in the area shown in **Map 3**. In a letter to the STA, the Secretaries denied STA's request, and stated that the Secretaries "only exercise their authority to impose Federal jurisdiction outside of Federal public land under extraordinary circumstances. The threshold for such a decision is extremely high, and is not met in this case. With such a healthy herring biomass, there is clearly no conservation concern with regard to the herring stocks and the associated fishery in Sitka Sound. Given the spawning characteristics of herring, closing State marine waters as is being requested would not significantly increase the likelihood of Fedeally qualified users harvesting their desired amounts in the Makhnati Island Federal public waters.

State Regulatory History

In response to a poor subsistence herring egg harvest in 2001, the STA submitted a proposal to the Alaska Board of Fisheries in 2002. The proposal requested that the herring sac roe fishery be dispersed to avoid concentrating the commercial harvest in traditional subsistence egg harvesting areas. The Alaska Board of Fisheries amended the proposal by removing a suggested requirement for a subsistence permit in


Map 3: Area requested of ADF&G by the Sitka Tribe of Alaska to be open only to subsistence uses of herring.
Baranof
Island
Middle
Island
Kasiana Island
Sitka
Sound
SITKA
Subsistence Only Area
Makhnati Island
1 0.5 0 1 2 Miles
Mapscale 1:90000

favor of face to face surveys to estimate subsistence herring egg harvest. The Alaska Board of Fisheries also established the amount necessary for subsistence (ANS) herring roe in Sitka Sound, Section 13-A and13-B north of the latitude of Aspid Cape at 105,000 to 158,000 pounds (5AAC 01.716(7) (b)) (Turek 2003). Regulations also limit customary trade in herring roe on kelp (5AAC 01.717 and 5 AAC 01.730 (g)). Other than spawn on kelp, there are no harvest limits for herring or herring spawn. When issuing a herring spawn on kelp subsistence fishing permit, the annual possession limit for herring spawn on kelp is 32 pounds for an individual or 158 pounds for a household of two or more persons. There are no regulations regarding subsistence reporting requirements, or specific allocations for subsistence (Turek 2006).

In November of 2002 a Memorandum of Agreement (MOA) was signed by the Chairman of the Alaska Board of Fisheries, the Commissioner of the Alaska Department of Fish and Game (ADF&G) and the STA Chairman. The State and the STA agreed to collaborate, communicate, and collect and share data (STA 2006). The MOA contains provisions for in-season collaboration which includes daily contact between the STA and ADF&G and stipulates that the STA will be consulted whether a proposed commercial opening might affect subsistence opportunity. If the STA concludes there is potential for the subsistence fishery to be negatively impacted by a proposed opening, the STA will provide this conclusion and reasoning to ADF&G verbally and in writing. A formal objection to a proposed opening does not necessarily result in a commercial closure, as ADF&G maintains discretion whether or not to open the commercial fishery.

The ADF&G is required to "distribute the commercial harvest by fishing time and area if the department [ADF&G] determines that is necessary to ensure that subsistence users have a reasonable opportunity to harvest the amount of herring spawn necessary for subsistence uses" (5AAC27.195(a)(2)). Additionally, commercial herring vessels, permit holders, and crew members may not take or possess herring for subsistence 72 hours prior to or following a commercial herring fishing period.

A proposal (#234) by the Sitka Tribe of Alaska to increase the amounts reasonably necessary for subsistence (ANS) of herring roe from the current range of 105,000 to 158,000 pounds to a range of 265,000 to 325,000 pounds has been submitted to the Alaska Board of Fisheries for deliberation in February 2009.

Biological Background

Excerpted from the ADF&G Wildlife Notebook Series (ADF&G 2000):

> Pacific herring generally spawn during the spring. In Alaska, spawning is first observed in the southeastern archipelago during mid-March. Spawning is confined to shallow, vegetated areas in the intertidal and subtidal zones.
>
> The eggs are adhesive, and survival is better for those eggs which stick to intertidal vegetation than for those which fall to the bottom. Milt released by the males drifts among the eggs and fertilizes them. The eggs hatch in about two weeks, depending on the temperature of the water.
>
> Herring spawn every year after reaching sexual maturity at 3 or 4 years of age. The number of eggs varies with the age of the fish and averages 20,000 annually. Average life span for these fish is about 8 years in Southeast Alaska.
>
> Mortality of the eggs is high. Young larvae drift and swim with the ocean currents and are preyed upon extensively by other vertebrate and invertebrate predators. Following metamorphosis of the

larvae to the juvenile form, they rear in sheltered bays and inlets and appear to remain segregated from adult populations until they are mature.

Herring are located in distinctly different environments during different periods of the year. After spawning, most adults leave inshore waters and move offshore to feed primarily on zooplankton such as copepods and other crustaceans. They are seasonal feeders and accumulate fat reserves for periods of relative inactivity. Herring schools often follow a diel vertical migration pattern, spending daylight hours near the bottom and moving upward during the evening to feed.

The estimated spawning biomass of herring in Sitka Sound from 1978 to 2007 has been trending upward (**Figure 1)**.

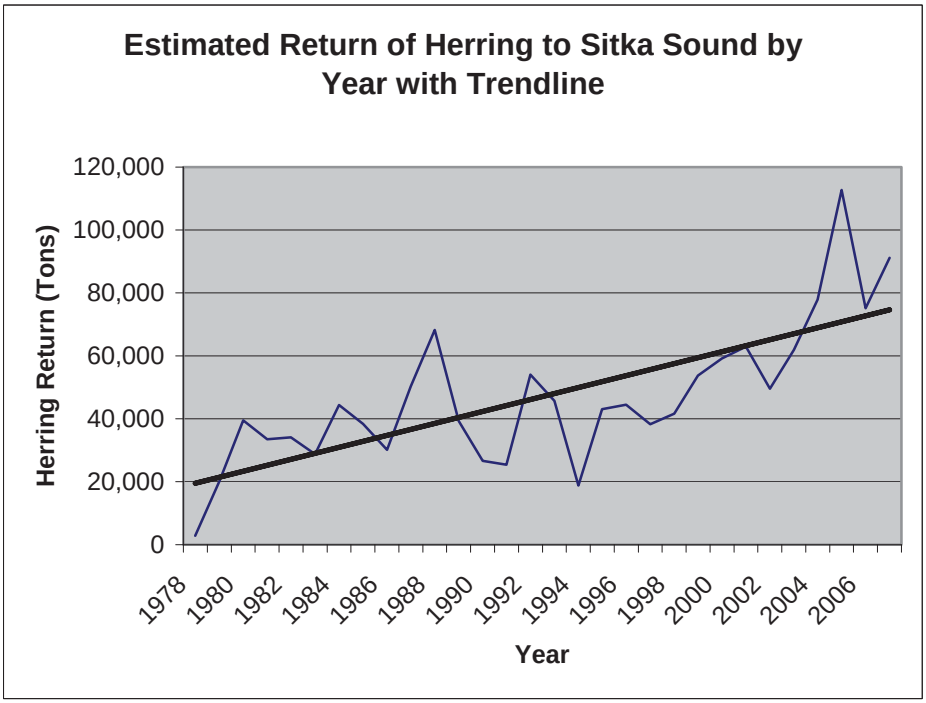


Figure 1. Estimated return of herring to Sitka Sound from 1978 through 2007 showing upward trend (Data from Davidson et al. 2006 and Gordon 2008).

Harvest History

Subsistence Harvest Methods

The subsistence herring egg harvest is a complex and time intensive process. According to Schroeder and Kookesh (1989), this customary and traditional harvest is conducted using a variety of egg deposition strata including hemlock branches and trees, kelp, seaweed and occasionally man-made materials. In the spring (late March-April), seal, sea lion, and sea gull feeding activity are indicators for subsistence harvesters that the herring have arrived to Sitka Sound. There are many "superhouseholds" who harvest herring eggs for multiple households in addition to their own. Herring eggs are a highly valued item in subsistence trade and sharing networks. For a detailed examination of the subsistence herring egg harvest, please refer to Schroeder and Kookesh (1989) in Appendix A.

Subsistence Harvest

ADF&G Division of Subsistence conducted research on the subsistence harvest of herring eggs in Sitka Sound as part of household harvest surveys conducted in Sitka in 1997. These studies included herring egg harvest estimates (ADF&G 2003). At the January 2002 meeting, the Alaska Board of Fisheries requested that ADF&G Division of Subsistence work with the STA and conduct harvest surveys for the Sitka Sound herring egg fishery. In 2002 and 2003, the ADF&G provided field survey and interview project support, and data analysis. The STA, working with ADF&G staff conducted interviews in person with harvesters and provided harvest data to ADF&G for analysis in 2002 and 2003. Research conducted by ADF&G and the STA in 2002 and 2003 produced harvest estimates of the total pounds of herring eggs-on-hemlock-branches and the total pounds of herring eggs harvested on *Macrocystis*, hair seaweed and other substrate. The STA also collected harvest data from 2004 through 2008 (STA 2006 and Turek 2008). In 2008 a project (08-651 Makhnati Island Subsistence Herring Fishing Assessment) was funded through the Fisheries Resource Monitoring Program to determine the contribution of Federal public waters to the total harvest of herring spawn in Sitka Sound. The project results from the 2008 herring harvest should be available this fall. For the seven available years of data (1997, 2002-2007), the average annual total harvest of eggs in Sitka Sound on all substrates was 176,201 pounds (**Table 1)**.

Table 1. Subsistence Harvest of Herring Roe on All Substrates, Sitka Sound (STA 2008).

Year	Total Roe Harvest (lbs)
1997	127,174
2002	151,717
2003	278,799
2004	293,579
2005	75,572
2006	219,356
2007	87,211
2008	Pending
Average	176,201

Commercial Harvest

The following is excerpted from Woodby et al. 2005:

> Sac roe fisheries harvest herring just before spawning using either purse seine or gillnet. The roe is salted and packaged as a product that sometimes sells for over $100/lb ($220/kg) in Japan. In recent years the Alaska sac roe harvest has averaged about 50,000 tons (45,500 mt), almost all of which ends up in the Japanese marketplace.

The 2008 Southeast Alaska Sac Roe Herring Fishery Management Plan (Bergman et al. 2008) can be found in **Appendix B**. The plan covers all commercial sac roe herring fisheries in Southeast Alaska, but has been edited to include only the Sitka Sound fishery. **Table 2** displays the fisheries statistics for the Sitka Sound commercial sac roe herring fishery from 1978 through 2008 (Davidson et al. 2006, Gordon 2008).

Effect of the Proposal

This proposal would close the Federal public waters in the Makhnati Island area near Sitka to all uses of herring and herring spawn except for subsistence harvest by Federally qualified subsistence users. All rural residents of Alaska would be able to harvest herring and herring spawn for subsistence purposes, but there would be no sport or commercial harvest in Federal public waters.

A Federal closure of a fishery may only be exercised when it is necessary to conserve fish stocks or to continue subsistence uses. The Board determined in December of 2007 that there was no conservation

Table 2. Sac Roe Herring Harvest and Herring Spawn Information, Sitka Sound (Davidson et al. 2006 and Gordon 2008).

Year	Forecast Biomass (tons)	Quota (tons)	Harvest (tons)	Spawn Deposition Estimate (tons)	Catch + Esc = Return (tons)	Roe Percent	Date First Opened	Date of First Spawn	Nautical Miles Spawn
1978	4,500	250	175	2,700	2,875	11	05-Apr	08-Apr	13
1979	20,300	2,000	2,250	17,750	20,000	9.3	12-Apr	13-Apr	41
1980	39,500	4,000	4,385	35,100	39,485	10.8	04-Apr	03-Apr	63
1981	27,000	3,000	3,506	30,000	33,506	11	24-Mar	22-Mar	60
1982	30,000	3,000	4,363	29,700	34,063	11.7	30-Mar	24-Mar	41
1983	32,850	5,500	5,450	23,250	28,700	11.1	26-Mar	21-Mar	68
1984	30,550	5,000	5,830	38,500	44,330	11.1	26-Mar	21-Mar	65
1985	38,500	7,700	7,475	30,950	38,425	11.3	29-Mar	29-Mar	61
1986	30,950	5,029	5,443	24,750	30,193	11.9	02-Apr	27-Mar	52
1987	24,750	3,600	4,216	46,050	50,266	9.9	31-Mar	21-Mar	86
1988	46,050	9,200	9,575	58,650	68,225	9.5	04-Apr	23-Mar	104
1989	58,500	11,700	12,135	27,200	39,335	9.4	31-Mar	19-Mar	66
1990	27,200	4,150	3,804	22,750	26,554	10.6	05-Apr	31-Mar	39
1991	22,750	3,200	1,908	23,450	25,358	8.9	10-Apr	01-Apr	45
1992	23,450	3,356	5,368	48,600	53,968	9.4	06-Apr	28-Mar	73
1993	48,500	9,700	10,186	35,500	45,686	10.7	27-Mar	24-Mar	55
1994	28,450	4,432	4,758	14,026	18,784	11	29-Mar	28-Mar	58
1995	19,700	2,609	2,908	40,169	43,077	11.8	25-Mar	21-Mar	37
1996	42,265	8,144	8,144	36,372	44,516	9.6	23-Mar	22-Mar	46
1997	54,500	10,900	11,147	27,126	38,273	11.5	18-Mar	19-Mar	41
1998	39,200	6,900	6,705	34,943	41,648	10.2	16-Mar	19-Mar	65
1999	43,600	8,476	9,136	44,610	53,746	10.7	22-Mar	22-Mar	60
2000	33,365	5,120	4,813	54,399	59,212	9.9	19-Mar	19-Mar	55
2001	52,985	10,597	11,972	51,000	62,972	10.9	22-Mar	23-Mar	61
2002	55,209	11,042	9,789	39,719	49,508	10.9	27-Mar	24-Mar	43
2003	39,319	6,969	7,051	54,875	61,926	10.7	22-Mar	23-Mar	47
2004	53,088	10,618	10,490	67,379	77,869	10.8	21-Mar	27-Mar	80
2005	55,962	11,192	11,366	101,305	112,671	11.5	23-Mar	24-Mar	40
2006	52,059	10,412	9,967	65,126	75,093	10.5	24-Mar	23-Mar	57
2007	59,519	11,904	11,571	79,598	91,169	11.4	26-Mar	28-Mar	50
2008	87,715	14,723	14,700				25-Mar	27-Mar	55
Longterm Avg	39,429	6,917	7,116	40,185	47,048	10.6			55.7
5-Year Avg	61,669	11,770	11,619	73,657	76,548	10.9	24-Mar	25-Mar	56.4

concern with herring in this area at recent biomass levels and that closing Federal public waters to non-Federally qualified users may not be effective in benefiting subsistence users (FSB 2007b).

The biomass of herring returning to spawn in Sitka Sound has been trending higher for the last 30 years of commercial fishing (Figure 1). The 2008 pre-season estimate of herring biomass in the Sitka Area was the highest recorded at 87,715 tons. The estimated return will be available in the fall of 2008.

Subsistence users are allowed to harvest herring and herring eggs anywhere in and around Sitka Sound. The location and intensity of herring spawn in Sitka Sound varies from year to year. From 1978 to 2007, the amount of spawn deposition has varied from 13 to 104 nautical miles of beach per year and has not occurred in the same areas every year. Spawn deposition is more consistent in some areas, but spawning is not assured in any area every year. Spawn and subsistence harvest occurs in most years within Federal public waters. However, where people harvest herring eggs is ultimately determined by where the herring spawn. In 2008, the spawn in Federal public waters was very minimal.

The area where the commercial sac roe herring fishery occurs varies widely from year to year. From 1992 to 2008, the Federal public waters near Makhnati Island have made up part of the areas open to commercial sac roe herring fishing 6 out of 17 years (1993, 1999, 2001, 2003, 2005 and 2006). In 1993, the entire area was part of a larger commercial open area. In 1999, 2001 and 2005, only the Whiting

Harbor side (north side) was included and in 2003 and 2006, only the Nepovorotni side (south side) was included. Since the area of Federal public waters has been a part of larger areas open to commercial fishing, there is no way to apportion harvest from only Federal public waters. No commercial harvest occurred in Federal public waters in 2007 or 2008 and the vast majority of commercial harvest occurred well away from traditional subsistence harvest areas yet subsistence needs were not met (in 2007 and likely in 2008). For example, **Figure 2** displays the relationship of the 2008 commercial harvest compared to the area that STA requested that ADF&G avoid commercial harvest.

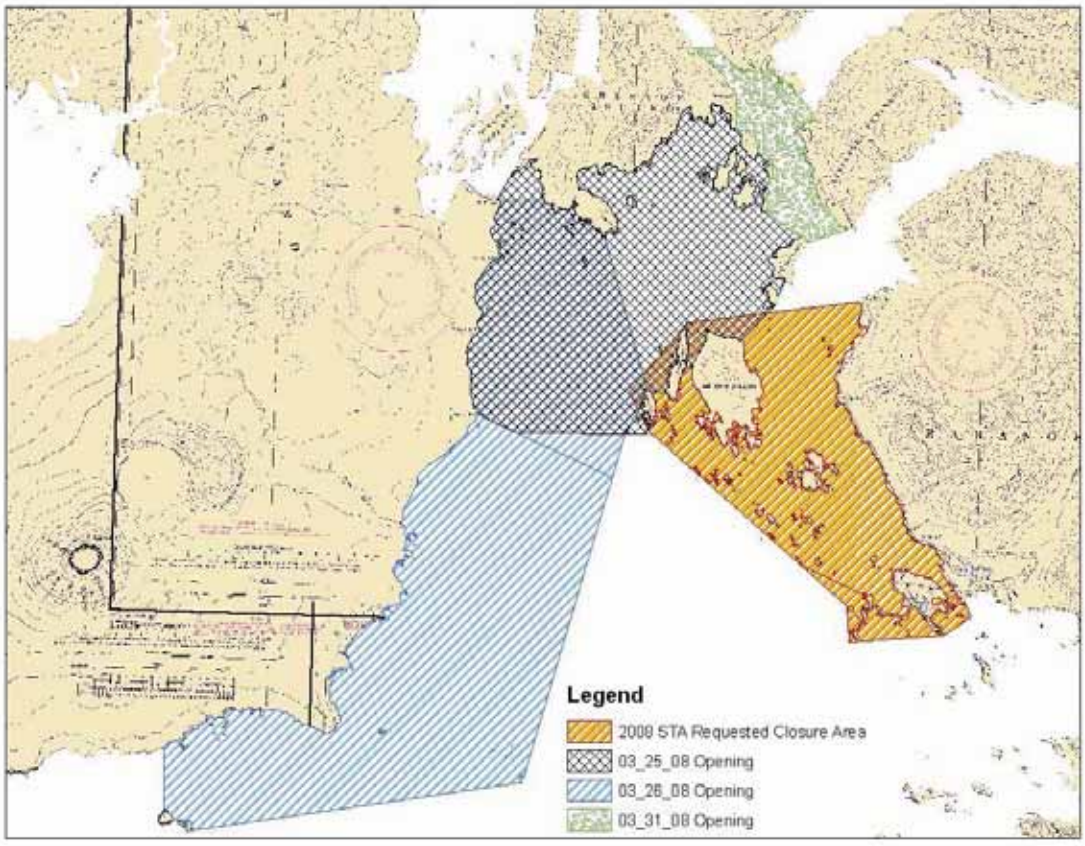


Figure 2. Relationship of the three commercial sac roe herring openings to the area requested by Sitka Tribe to be closed to commercial herring fishing.

Federal fisheries managers have been delegated the authority to close or re-open Federal public waters to non-subsistence fishing. This delegation may be exercised only when it is necessary to conserve fish stocks or to continue subsistence uses. In-season action would be nearly impossible to justify by a Federal manager in this case. Although the ADF&G forecasts the herring biomass before the season starts, the actual return and spawning success of herring is not known until after the commercial and subsistence fisheries are completed. Since the commercial fishery takes place well before the subsistence fishery, managers would not know that the subsistence fishery was poor until long after the commercial fishery ended.

In years when subsistence needs were not met, it is unlikely that a closure to other users in Federal public waters would have made a difference. For example, in the Federal public waters in 2008, no commercial harvest occurred and the spawn deposition was extremely minimal; therefore, a closure would not have been effective. Spawn location is a prime factor affecting harvesters' success. Additionally, inclement weather, spawn timing, loss of sets, and the amount of participation by high harvesters are other likely contributors to subsistence harvesters not meeting their needs. The size of the stock, the conservative commercial harvest levels, and the effective dispersion of the commercial fishery necessitates identifying other factors responsible for subsistence harvesters not meeting their needs. Closing Federal marine waters, as is being requested, provides no assurance that Federally qualified subsistence users will meet their herring needs.

The Alaska Board of Fisheries will meet in February 2009 to discuss Southeast fisheries issues and will be another forum to address herring issues in Sitka Sound.

Public testimonies during the Council meeting in September of 2008, and the Council recommendation, have been carefully considered, but the OSM conclusion remains unchanged.

OSM CONCLUSION

Oppose Proposal FP09-05.

Justification

This proposal is effectively the same as the proposal considered by the Board in December of 2007. At that time the Board determined there was no conservation concern in this area for herring at recent biomass levels and that closing Federal public waters to non-Federally qualified users may not be effective in benefiting subsistence users. The biomass in Sitka Sound has been trending higher since 1978 with the highest estimated pre-season biomass in 2008. There have been no restrictions on subsistence uses. No commercial harvest occurred in Federal public waters in 2007 or 2008 and the vast majority of commercial harvest was taken well away from Federal public waters and traditional subsistence harvest areas. In years when subsistence needs were not met it is unlikely that a closure to other users in Federal public waters would have made a difference. Adoption of this proposal would result in an unnecessary closure to non-Federally qualified users. The Alaska Board of Fisheries will meet in February 2009 to discuss Southeast fisheries issues and will be another forum to address Sitka Sound herring issues.

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APPENDIX A

Subsistence Harvest Methods

The following was excerpted from Schroeder and Kookesh (1989):

Timing of Harvest

Seal, sea lion, and sea gull feeding activity are indicators for the subsistence harvester that the herring have arrived to Sitka Sound. Regular monitoring of the traditional herri spawn areas is necessary to anticipate when the herring will spawn. Active harvesters drive out on Halibut Point Road to check for spawn daily or use skiffs to cruise the islands in Sitka Sound looking for schooled herring close to the beach. In recent years, ADF&G has monitored the herring roe percent as part of its management of the commercial herring roe fishery in Sitka Sound. Subsistence users follow ADF&G herri roe percent estimates. When the roe count reaches about 10 percent, the herring are rea to spawn. In most years, Sitka herring spawn in April. In the current year, however, firs herring spawn appeared on March 26.

Selection and Placement of Hemlock Branches and Trees

Sitka's most active harvesters, those who supply many people with herring eggs, set 60 80 small hemlock trees about 15 to 20 feet long in sets of 2 to 10 trees. In contrast, less- active harvesters may set a small number of hemlock branches in one or two sets. Branches are much easier to handle. Egg laden trees can be so heavy that harvest from a small skiff is difficult. The most active harvesters prepare well in advance so they are able to have their sets in place at the optimal time and place.

Young hemlock trees are selected for use as herring egg strata. Elder informants told us there are two types of young hemlock. The first type has small ridges running parallel o the tree. The second and preferred tree is smooth round. This was confirmed by active harvesters who told us they do not harvest the trees with the ridges because they have moss growing in the ridges. The harvesters do not like moss peeling off on the eggs wh they are cooked; therefore, round hemlocks are the preferred tree. Trees with full branches are preferred because they provide more area for egg deposition. Informants told us they used to be able to cut trees right at the spawning beaches, but they currently have to go further afield to find good trees. Trees are cut along the Sitka road system an transported by skiff to harvest sites. They are also cut from areas closer to the shoreline and spawning sites, particularly by the most active harvesters. Some harvesters go to more isolated areas in Sitka Sound for good trees. Trees are cut and trimmed with chainsaws, handsaws, and axes.

High harvesters told us they were putting out more sets in recent years and modified the way they make their sets. They have come to anticipate some of their sets will be stolen and put in enough sets to cover this expected loss. As much as possible, subsistence harvesters hide their set locations so they will not be found by others. Harvesters stoppe using buoys to mark their sets and stopped using heavy rope to tie their trees or branche together. When they use heavy rope, seine boats are able to use their blocks and winche to hoist whole sets on deck. Tying off sets to the beach was also discontinued because t

shoreline would also be covered with spawn and show as a thick white line running to t beach from the set. Harvesters are able to find their hidden sets by remembering shore features.

Hemlock trees and branches are usually set such that they will just be submerged at low tide. Sets we observed were in water from about 10- to 30-feet deep. Rocks or construction bricks were tied to the butt end of trees and bunches of branches with piece of web or seine twine. The trees or branches were set such that they would float perpendicular in the water. Trees in skates were tied together with heavy twine or piece of round line and separated about 20 feet from one another. The most active harvesters try to get their sets in the water before spawning occurs and have found that good deposition of eggs will not occur if sets are made after the water is milky.

Subsistence harvesters think herring spawn best at mean low water; however, the spawr fluctuates with flood and ebb tides. One respondent said he has noticed that herring usually start spawning at small tides. Herring trees and branches are left to soak for 2-4 days after the spawn has begun depending on the amount of spawn in an area.

This year saw an early false spawn in some areas. A false spawn occurs where male herring are releasing sperm with very few females releasing eggs. When this happens, subsistence harvesters may pull their sets and move them to another area. Although, it i possible to wait for another herring spawn to set on top of the thin false spawn, the resulting subsistence product will not be high quality; the inner herring eggs from the false spawn will mature under the fresh new eggs. Matured herring eggs start turning brown, and small eyes become visible. When the color of eggs has changed from white brown, the eggs are of lower quality for eating. When eyes have formed, they are no longer used. The preferred quality eggs are white deposited about an inch thick on the branches.

In addition to the setting methods described above, some branches are set directly from the beach at low tide. We also noted that about three branches were set from the float at Sandy Cove. We also heard reports that blueberry bushes, wire mesh screen, cheese cloth, and plastic tarp were occasionally used as deposition strata.

Harvesting Herring Eggs on Hemlock Branches

Small skiffs and runabouts are the most common vessels used by Sitka residents for harvesting herring eggs. We saw 14- to 18-foot aluminum skiffs with small outboards, open Boston Whalers of various sizes, and 23-foot cabin cruisers, and other similar sma vessels being used for herring egg harvest.

Harvesters using sunken and unmarked sets get in the vicinity of their set by locating shore landmarks. They then drag a grappling hook through the water to snag either the egg-laden branches or the ground line connecting individual trees. The roe covered tree and branches that have been snagged are then pulled to the skiff. Although smaller branches may then be pulled directly into a skiff, branches and trees are more commonl cut into manageable pieces before they are loaded. Based on our observations, a fully laden tree can hold more than 1,000 lbs. of quality eggs. Much more than can be handle in a small skiff. Cut branches are placed in plastic totes, pails, and garbage cans or load directly into the harvesting skiff. Before the eggs are put in the boat, they are usually

dipped 2-3 times to rinse both the milt or sperm and to wash out any sand or foreign matter from the branches. Sand or other material lowers the quality of the herring eggs, and they stay fresh longer if milt is washed out.

If trees and branches are thickly covered with spawn, the harvesting vessel can be quickly filled to capacity. Eggs are brought home for processing and distribution. While harvesters of small amounts of eggs may carry them up from any docking location, high harvesters prefer docks with loading ramps that facilitate transfer of eggs to the bed of a pickup. One enterprising harvester loaded eggs directly from his 17-foot Boston Whaler to the lined bed of his pickup. A boatload of eggs, estimated at 1,000 to 1,500 lbs. could be quickly loaded this way.

In addition to having sets stolen or ruined by false spawn, sets may not be harvested for other reasons. Spawn might be too thin in a particular location resulting in a low quality subsistence product. Rough weather might wash sand and debris into the eggs. Because of weather or other reasons, the harvester may not be able to get back to his sets until eggs have developed. Trees and branches may also be left in the water because the harvester has fulfilled his or her subsistence needs. The eggs left in the water are thought to develop normally.

Harvesting Herring Eggs on Hair Seaweed

Harvestable hair seaweed grows just below lowest low water. A subsistence harvester wanting this product pays attention to where his seaweed grows and whether or not the area usually receives a good herring spawn. When minus tides coincide with good spawn deposition, as they did in 1989, ne (herring eggs on hair seaweed) can be harvested in quantity by hand by a person wearing waders or rubber boots. This variety of seaweed breaks off easily, especially then thickly covered with herring eggs. Ne can quickly be gathered by the armload. At higher tides, ne is gathered with rakes and grappling hooks. Ne beds can be extremely productive under good conditions. In 1989, we observed the harvest by hand of about 500 lbs. of ne by two people from a 10-foot-by-10-foot area in about 20 minutes at a minus tide. As with haaw, or herring eggs on branches, ne are taken home for processing.

Harvesting Herring Eggs on *Macrocystis* Kelp

Egg-covered fronds of *Macrocystis* kelp are selected by subsistence harvesters from kelp beds where herring have spawned. Fronds are pulled into the harvesting vessel by hand or with a rake or grapple and cut in containers for transport. Based on interview reports, 1989 was a poor year for harvest of herring eggs on *Macrocystis* kelp. A number of our informants stated they usually harvested on these strata, but did not find good spawn in their usual harvest locations. We were not able to observe this harvest.

In terms of overall harvest of herring eggs, eggs on *Macrocystis* kelp is harvested by fewer subsistence users and in much smaller quantity than ne and haaw.

Herring roe on *Macrocystis* was not frequently mentioned in our interviews with elders concerning early herring egg harvesting practices, and few informants referred to the Tlingit word daaw (*Macrocystis* kelp) as an important herring egg stratum. This indicated

that harvest on daaw has been of less importance in Sitka Sound than harvest on the other two strata for some time.

Preparing, Preserving, and Packing Herring Eggs

Food preparation follows the traditional cooking methods. Herring roe, both ne and haaw, is dipped in boiling water once or twice. Eggs become unpalatable if they are cooked too long. Overcooked eggs turn dull white, and they become quite rubbery in texture and loose their flavor. Properly cooked bunches of eggs are barely warmed and retain some translucence. Cooked roe is eaten with seal oil or hooligan oil. Soy sauce, butter, mayonnaise, honey, vinegar, salt, and pepper are also used. Herring roe may also be eaten fresh or uncooked.

Preservation starts as soon as possible after harvest. Although some eggs are dried or salted, freezing is the most common method of home preservation. Haaw are cut into suitable pieces and placed in zip-lock bags for freezing. Ne is treated similarly. Some people are experimenting with vacuum packing as a new method for preservation. Frozen eggs can be used until the next year's harvest, although quality declines, as with other frozen products.

Eggs harvested for customary trade and barter are shipped out of town fresh with haaw predominating. Eggs are shipped out of town by Alaska Airlines, local air taxis, private boats and Alaska Marine Highway.

High Harvesters

Based on subsistence survey data for the 1987 harvest year, a relatively small number of households in Sitka account for a large portion of the total harvest of herring eggs taken for subsistence use. Field work in 1989 confirmed earlier survey results. Through interviews with ADF&G, staff and Sitka residents and examination of shipping records, we found that about 20 households fall into the high harvesting group. For our purposes a high harvester was a household that was known to supply many households with herring eggs. Although systematic measurement was not attempted in 1989, we estimate that households in this group harvested about 300 lbs. of eggs or more. We also found all of the identified high harvesters were Alaska Native residents of Sitka. While there is non-Native participation in this fishery, non-Natives are not known to harvest in quantity or to participate as major suppliers of herring eggs to non-harvesting households. . . .

Distribution and Exchange

A number of high harvesters assisted us by providing detailed description of their harvesting, trade, and barter of herring eggs during the 1989 season. Except among the closest of family members, fairly direct reciprocity is expected for the exchange of herring eggs. This often takes the form of barter where a different, similarly valued, subsistence food is returned for herring eggs received. When the receiver has nothing to offer in return for herring eggs, cash may be the medium of exchange with the receiver paying the giver some amount to cover the expenses and time involved in harvesting, packing and sending this highly prized food. . . .

APPENDIX B

The following text is excerpted from the 2008 Southeast Alaska Sac Roe Herring Fishery Management Plan (Bergman et al 2008). The plan covers all commercial sac roe herring fisheries in Southeast Alaska, but has been edited to include only the Sitka Sound fishery.

> The harvest strategy for Southeast Alaska herring sac roe fisheries is based on the availability and distribution of mature herring containing quality roe (at least 10% mature roe), mature spawning biomass estimates, population age structure, recruitment, size-at-age, and past spawning success.
>
> Herring populations are assessed annually to determine whether individual spawning stocks are above threshold and to determine the appropriate harvest rate (see Sliding Scale Harvest Rate on next page). As specified in 5AAC 27.190 HERRING MANAGEMENT PLAN FOR SOUTHEASTERN ALASKA AREA, harvest of a particular spawning stock is not allowed unless an assessment of the abundance and general condition of that spawning stock has been conducted and the estimated biomass is above the minimum spawning biomass threshold level. The threshold level is the herring biomass needed to meet minimum spawning and/or allocation requirements. The established threshold levels for the herring sac roe fishing areas are: Sitka Sound 20,000 tons.
>
> Varieties of methods have been used to assess the status of herring populations in Southeast Alaska. Before 1970, herring abundance was assessed through visual estimates made from vessels using depth sounders and sonar immediately prior to spawning or on wintering aggregations. In addition, miles of spawn were documented with aerial or skiff surveys. A computer-assisted hydro acoustic survey method was developed in the early 1970s and used extensively during the late 1970s to the mid-1980s. Spawn deposition surveys were first used in 1976 and continue to be a key component of current assessment methods. The spawn deposition method combines diver estimates of herring egg deposition on the spawning grounds along with estimates of total area receiving spawn, average fecundity, average weight at age, and age composition, to yield an estimate of spawning biomass. In past years, estimates of spawning biomass from one year were used as the forecast to set harvest quotas for individual spawning stocks for the following year.
> Beginning in 1993, ADF&G began using age-structured analysis (ASA) to forecast abundance for selected spawning stocks with sufficient historic stock information. The ASA method relies on a time series of herring population assessment data (e.g., survey estimates of egg deposition (trillions of eggs), fecundity, age composition and weight-at-age from samples of spawning herring, catch age composition and weight-at-age, weight-at-age from winter test sampling, and estimates of harvest-related mortality) to forecast herring biomass for specific spawning stocks. This method applies estimates of recruitment, growth, maturation, and natural mortality to an estimate of spawning escapement from one year to forecast biomass for the next year. This is an important development because gains in herring biomass due to recruitment, growth, and maturity are often not equal to the loss of biomass due to natural mortality, as is assumed when using the spawn deposition method for forecasting abundance. The ASA method is currently used to forecast herring abundance for the Sitka, and Seymour Canal fisheries.

SLIDING SCALE HARVEST RATE

The allowable harvest is based on a graduated scale that allows for higher harvest rates as a herring population increases relative to the threshold level. This approach maintains annual harvest rates between 10% at and 20% of the forecast spawning stock if the forecasted biomass is greater than established threshold levels. When the spawning stock biomass is at the minimum threshold level, a 10% harvest is allowed. The harvest rate formula that now applies to the Sitka Sound sac roe herring fishery based on Board of Fisheries action taken at the 1997 meeting in Sitka. For the Sitka fishery, the new harvest rate is calculated as follows using a 20,000-ton threshold:

$$\text{Percent Harvest Rate} = 2 + 8\left[\frac{\text{Forecast Spawning Population Size}}{\text{Threshold Level}}\right]$$

The Sitka Sound sac roe fishing area encompasses the waters of Section 13-B north of the latitude of Aspid Cape and Salisbury Sound in Section 13-A. Though regulations defining the sac roe seine area do not include Section 13-A, the department has allowed commercial harvest in Salisbury Sound by emergency order in 1989, 1999, 2002, and 2006. The department considers herring that spawn in Salisbury Sound part of the Sitka Sound herring spawning stock and has included Salisbury Sound spawn in the stock assessment.

This fall the department ran several ASA model runs exploring various biological parameters affecting the Sitka Sound herring stock and other model parameters to improve the fit of the model to the observed data. The ASA model uses a long time series of abundance and age composition data from department surveys conducted during the spring fishery. The best fitting ASA model run included splitting the maturity schedule estimates for the periods 1978–2001 and 2002–2007. The maturity schedule is the estimation of what age the herring are reaching maturity and capable of spawning. The model is showing that during the period 2002–2007 a smaller portion of age-3 through age-7 herring are recruiting as mature herring to the spawning grounds and the fishery. Maturation of herring is a function of growth and in recent years younger herring have been growing at a slower rate. The preliminary 2008 forecast for the Sitka Sound herring spawning biomass is 78,446 tons. Based on this forecast and a 20% harvest rate the preliminary GHL would be 15,689 tons. However, the department has selected a more conservative GHL than that forecast using the ASA model because it is not fully understood how changes in the environment that are affecting herring growth, maturation and survival will affect the herring population in future years. The preliminary GHL announced December 4, 2007 was 13,796 tons and was based on averaging the 2007 forecast biomass with the 2008 forecast biomass and a 20% harvest rate. Based on size-at-age data from winter samples collected in Sitka Sound on February 6, 2008, the GHL for the 2008 sac roe herring fishery has been revised to a final GHL of 14,723 tons. The ASA model forecast indicates the 2008 spawning population will consist of 4% age-3, 6% age-4, 9% age-5, 13% age-6, 12% age-7, and 57% age-8+ herring.

Herring distribution and roe quality will be monitored prior to and during the fishing period. Monitoring methods for 2008 will include aerial surveys, hydroacoustic surveys, and test fishing.

In 2008, ADF&G will continue to coordinate the test boat program through a fisherman coordinator who will assign daily test fishing boats requested by ADF&G. Prior to making test sets, the identified test boats will contact ADF&G biologists on the grounds

to monitor set locations and to plan for transport of herring samples to a central location for analysis by industry technicians. The areas open to fishing will depend on the distribution of herring, the need to provide for a fishery that will harvest good quality herring, and the need to provide a reasonable opportunity for subsistence.

In order to help ADF&G to ensure that a reasonable opportunity is provided for subsistence, a Memorandum of Agreement (MOA) was signed by ADF&G and the Sitka Tribe of Alaska (STA) on November 4, 2002, and finalized by the Alaska Board of Fisheries on December 17, 2002. This agreement brings consideration of potential impacts of the commercial sac roe herring fishery on the subsistence herring fishery in Sitka Sound to the ADF&G fishery manager through an in-season consultation process. An in-season Tribal Liaison will be consulted prior to each commercial opening. If the Tribe concludes that there is a potential for subsistence harvesters to be negatively impacted by the proposed opening, the Tribal Liaison will provide this conclusion and reasoning to the department verbally and in writing. An in-season task force consisting of the Tribal, industry and ADF&G representatives will meet immediately after receiving notification of an objection to a commercial opening. It will be necessary to specifically identify the composition of representatives and the individuals on the task force prior to the fishery being placed on 2-hour notice. In the event of dissenting recommendations from task force members, the ADF&G manager would be the final arbiter after having considered all input from the task force.

Beginning with the 2002 season STA, working in collaboration with ADF&G Subsistence Division, has developed a methodology using a household survey, in lieu of using a permit system, to estimate the subsistence herring roe harvest. Following each season, the Sitka Tribe of Alaska conducts a "census" type survey whereby all known participants in the subsistence fishery are contacted to determine the results of the subsistence harvest. The list of participants is changed each season to reflect newly identified participants and to remove past participants who have either moved or passed away. The survey information is used to determine the amount and quality of the subsistence harvest, and would indicate whether the amount reasonably necessary for subsistence (105,000–158,000 pounds) had been successfully harvested. In 2004 and 2005 ADF&G Subsistence Division was not able to collaborate due to budget constraints. The results of the 2007 harvest survey are not yet completed. Previous season's harvest were 219,356 pounds in 2006, 75,572 pounds in 2005, 294,000 in 2004, 210,000 in 2003 and 112,000 in 2002.

To the extent that the commercial harvest can affect subsistence opportunities the department is determined to act on opportunities for openings outside of the high use subsistence areas as they arise. The department recognizes that fishing within the high use subsistence area may be necessary in order to provide an opportunity for the commercial fishery to harvest and to reach the season's GHL. ADF&G, STA and industry will continue to work collaboratively in identifying sac roe harvest opportunities in the greater Sitka Sound area and whether it is necessary to distribute the harvest time and area in the commercial fishery in order to provide a reasonable opportunity for subsistence. Mechanisms of consideration for distribution of commercial harvest may include the following:

1. Limiting harvest in the highest frequency spawning area along the Halibut Point Road shoreline in proportion to historical use patterns established by past commercial competitive fisheries (50–55% of the GHL).
2. Choosing dispersal of time and area by selecting appropriate in-season options.

3. Considering recommendations from in-season task force members.

ADF&G held a Southeast Alaska sac roe fisheries pre-season planning meeting in Sitka on January 31, 2008. There was general agreement that the harvest strategy would be to harvest this season's GHL in four openings with at least one day between openings. This is consistent with previous season's harvesting rates assuming similar tendering and processing capacities. This will serve as a general plan of approach for the 2008 fishery. It will be necessary to remain flexible and adapt specific opening target harvest levels in consideration of in-season assessment of herring distribution and quality, changes in available processing and tendering capacity, input from industry representatives, and dispersing the harvest by time and area away from traditional subsistence harvesting areas. A general pre-fishery meeting immediately prior to the fishery will be held in Sitka when the fishery is being placed on 2-hour notice.

INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-05

The Interagency Staff Committee (ISC) found the staff analysis for Proposal FP09-05 to be a thorough and accurate evaluation of the proposal. However, consistent with the Southeast Alaska Subsistence Regional Advisory Council's (Council) recommendation, a minority of the ISC suggests that the Federal Subsistence Board consider new information presented at the Council's meeting and that this information could be used to draw a different conclusion than that reached by the OSM. The majority suggests that the "new" information presented to the Council is mostly not new, is preliminary in nature (mostly without peer review) and, even with the "new" information, the OSM conclusion remains relevant to the analysis and is still valid.

Two parts of ANILCA for the Board to consider are: 1) does the Board have rationale to choose to not follow the Council's recommendation (Section 805(c)), and 2) would the Board's closing of Makhnati Island be consistent with Section 815(3), as further refined through the Board's closure policy?

The majority, consistent with the OSM analysis and conclusion, suggest that closure of the Makhnati Island area to non-Federally qualified users is not needed for conservation of the herring stock or to continue subsistence uses, and is not supported by substantial evidence.

The minority suggest that a closure could be an effective action enabling rural residents to continue their subsistence uses of herring eggs, which is consistent with the Council's recommendation and Section 815(3). The Council's position is supported by newly-revised information on insufficient egg harvests in 2008 (a 2nd consecutive year), as well as long term data which document the frequent, consistent use of Makhnati Island waters for spawning by Sitka Sound herring. This particular locality has been especially valuable to subsistence users, as it is an important area for collecting highly-prized herring roe-on-kelp, has protected conditions for safe gathering, and was one of the few places where rural residents were able to obtain good quantities of herring eggs during some of the low harvest years. Commercial fishing closures to protect herring during their spawning activities have been employed by fisheries managers in Washington and British Columbia. While the Makhnati Island Federal waters are of limited extent, a closure could nevertheless increase the likelihood that herring are able to successfully spawn with reduced disruption, at a site documented to be important for both herring reproduction and subsistence harvests.

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-05 MAKHNATI ISLAND AREA HERRING

Introduction: Proposal FP09-05[1] requests closure of marine waters of Makhnati Island and Whiting Harbor, which are subject to federal claims of jurisdiction, to harvest of herring by non-federally qualified users. The closure would only allow subsistence herring fishing by federally-qualified users and would bar state subsistence, sport, and commercial fisheries for herring or herring spawn in the area. The proposed closure area is not where the primary subsistence herring fishing has occurred, and commercial harvest rarely occurs in the area. In addition, no new information has been provided that would support the proposed closure.[2]

Impact on Subsistence Users: Adoption of this proposal would be potentially detrimental to subsistence fisheries, depending upon where and when herring spawn each year. The commercial fishery is managed to minimize harvests near heavily used subsistence areas. Actions by the Alaska Department of Fish and Game (Department) commercial fishery managers must be taken in a timely manner to be effective. The proposed closure would limit options for where a commercial fishery could occur, potentially resulting in adding a commercial fishery in other areas important to subsistence users. The proposed closure would also prohibit subsistence and sport harvest in this area by non-federally qualified individuals. A closure in this small area (560 acres) would have little or no impact on the total subsistence, sport, or commercial harvests.

Opportunity Provided by State: For the majority of subsistence herring egg harvest, the Department does not restrict fishing periods, seasons, or amounts of herring harvested for subsistence purposes in this area. Harvest of spawn on hemlock boughs or spawn on hair kelp is unrestricted, and no State permit is required. Post-season evaluation of subsistence harvest is accomplished by a harvest monitoring program conducted by Sitka Tribe of Alaska in cooperation with the Department's Division of Subsistence. The Alaska Board of Fisheries found that 105,000 to 158,000 pounds of herring spawn is the amount reasonably necessary for subsistence uses in Section 13-A and Section 13-B north of Aspid Cape. The Department requires a permit that may limit harvest of spawn on Macrocystis kelp and requires harvest reporting following the season. (*See* 5 AAC 01.730(g)) Harvest of spawn on Macrocystis kelp accounts for an average of only two percent of the subsistence harvest on all substrate types, so State requirements for spawn on kelp harvest is not a significant limitation.

The limited non-commercial exchange for cash of subsistence-harvested herring roe on kelp, harvested in Districts 1-16 under terms of a permit, is allowed as customary trade. The annual possession limit for spawn-on-kelp is 32 pounds for an individual and 158 pounds for a household of two or more people. The Department has authority to issue additional permits for herring spawn-on-kelp above the annual possession limit if harvestable surpluses are available. Commercial

[1] Proposal FP09-05 repeats previous Proposal FP07-18, which was deferred by the Federal Subsistence Board (Federal Board) at its January 2007 meeting, renumbered and resubmitted for consideration at the Federal Board's December 2007 meeting, where it was rejected, 1-5, by the Federal Board.
[2] Information presented during public testimony to the Southeast Regional Advisory Council meeting on September 24, 2008, did not provide evidence that closing Makhnati Island area to non-federally qualified users would meet the requirements of the Federal Subsistence Board's closure policy or benefit subsistence users.

herring vessels, permit holders, and crew members may not take or possess herring 72 hours prior to or following a commercial herring fishing period.

Conservation Issues: Currently, there are no conservation or management concerns for the Sitka Sound herring stock that potentially spawn in waters of the Makhnati area. From 1979 through present, the Sitka Sound herring resource has been above the current 20,000 ton threshold every year, with only one exception, and the run has averaged 75,342 tons per season in the recent five-year period (2003–2007). Herring are managed under a conservative management strategy that sets threshold biomass levels below which commercial harvest is not allowed and limits harvest rates to 10-20 percent of total mature spawning biomass. This is a time-proven strategy that provides for conservation of the resource. The area proposed for closure is so small that it is unlikely to provide conservation benefits above the threshold level and harvest rate, especially given the highly variable nature of herring spawning behavior.

Jurisdiction Issues: The Federal Board does not have authority to close this area solely to commercial herring fishing as suggested by some closure proponents. Instead, the Federal Board would have to close the area to herring harvest by all non-federally qualified users, which would include all subsistence, personal use, sport, commercial, or other harvests occurring under State regulations. Such a closure is not necessary to provide for continued federal subsistence and would violate section 815 of ANILCA. Such a closure may also be detrimental to subsistence uses by unnecessarily limiting options for management of commercial fisheries and, thereby, potentially increasing impacts to areas that are more important as subsistence use areas.

Other Issues: Herring biomass in Sitka Sound has shown a long-term increase and is considered healthy. The 55.3 total nautical miles of spawn in Sitka Sound in 2008 was consistent with the recent five-year average of 54.8 nautical miles and above the long-term (1964-2007) average of 42.4 nautical miles. The spawning biomass after the 2008 fishery, as estimated by spawn deposition surveys, is not available at this time, although preliminary assessment of spawn deposition indicates a record high level. The estimated average spawning biomass from 1964-2007 is estimated at 30,617 tons, and the recent five-year average spawning biomass (2003–2007) is estimated at 75,342 tons. The 2008 season forecast biomass of 87,715 tons was the highest on record. In contrast to the 2007 spawning event, in 2008 a significant portion of the biomass spawned on Kruzof Island shoreline on the west side of Sitka Sound. The Kruzof Island shoreline is not considered a viable opportunity for setting subsistence branches due to the distance from town, exposure to ocean surge, and generally unfavorable shoreline structure for setting branches. Significant spawning also occurred along islands near the road system, including heavily used subsistence areas of Kasiana and Middle Islands. Unlike the 2007 season, very limited spawning occurred within the federally claimed waters of Makhnati Island in 2008. During the 2008 season, bad weather generally did not impact subsistence users from accessing fishing sites, and commercial harvests during the 2008 season occurred well away from the Makhnati area. The 2008 commercial sac roe GHL of 14,723 tons was harvested on three separate days. Two openings occurred March 25, harvesting 1,147 tons in an area over 4 nautical miles distant from the Makhnati area. On March 26, two one-half hour openings occurred harvesting 9,380 tons. The fishery boundaries for the March 26, 2008, openings were just over 3 nautical miles from the Makhnati area, though the actual harvesting occurred over 7 nautical miles west on Kruzof Island shoreline.

The third opening occurred March 31 harvesting 3,973 tons with the nearest open waters being 5.5 miles distance from the Makhnati area.[3]

Recommendation: Oppose.

[3] For further information about recent commercial fisheries management of Sitka Sound herring stocks, please refer to the Department comments for Proposal FP08-18, at pages 272-274 of the December 12, 2007, Federal Board meeting materials, and the Federal Board December 12, 2007, meeting transcripts (pages 92-200).

WRITTEN PUBLIC COMMENTS

Oppose. Sitka Herring Association represents the interests of commercial herring sac roe fishery permit holders and opposes the seemingly endless efforts by the Sitka Tribe of Alaska to eliminate the State managed commercial fishery for herring in Federally owned waters surrounding Makhnati Island. Since no new information has been presented by the Sitka Tribe of Alaska in proposal FP09-05 and that it is effectively the same as previous proposals FP07-18 and FP08-18, review of this proposal for the third consecutive year is unnecessary and overly burdensome to the affected parties. Consequently, Sitka Herring Association requests that the Federal Subsistence Board to deny further hearings on this subject.

This spring, Sitka Herring Association and a number of processing companies joined together to provide and pay for a transport vessel which was used to support subsistence efforts. In addition, one local processor independently provided a vessel and support for subsistence gatherers to harvest herring eggs on branches in excess of their own needs for those interested in obtaining the product. Both projects were designed to provide subsistence foods to those who—for one reason or another—were unable to obtain their own.

In spite of over 50 linear miles of herring spawn throughout Sitka Sound this season (2008), there have been reports of inadequate harvest for subsistence gatherers. Much of the spawn deposition appeared to occur outside of easily accessible areas with very little around Makhnati Island. While the utility of the Makhnati Island area for subsistence use is questionable under the best of circumstances, given this year's spawn distribution, withdrawal and closure of the Makhnati Island group would have had no affect on the outcome of subsistence gathering efforts.

Together, permit holders and processors are working to resolve legitimate issues as they arise with subsistence users. With Sitka Sound herring roe issues on the Alaska Board of Fisheries' agenda in January 2009, it would be helpful for the Federal Subsistence Board to refuse consideration of FP09-05 so that more thorough airing of subsistence issues relating to the entirety of the Sitka Sound area can be dealt with through the State regulatory process.

Submitted by Scott Mcallister, President, Sitka Herring Association

Oppose. United Fishermen of Alaska (UFA), a trade association of 37 Alaska commercial fishing organizations as well as individual members representing commercial fishermen throughout the state and its offshore waters, has monitored actions taken by the Federal Subsistence Board since 1999 when Federal management of subsistence fisheries through ANILCA was effected. Commercial fishing is above all dependent on access to marine fishery resources, and UFA has a general obligation to address any Federal Subsistence Board action that can compromise that access. Although UFA is aware of ANILCA mandates that provide a priority for Federally qualified subsistence users, we are concerned that proposal FP09-05, which would close Federal waters near Makhnati Island in Sitka Sound to commercial herring fishing, does little or nothing for subsistence users while usurping State jurisdiction in the commercial fishery. The Alaska Board of Fisheries-approved management plan for the Sitka herring fishery has been designed with a herring biomass threshold that provides subsistence opportunities before any commercial fishery can take place, ensuring opportunity for subsistence harvest. We oppose proposal FP09-05 as an unnecessary intrusion into State fisheries management.

A similar measure was proposed in the 2007 cycle, deferred to 2008 and turned down by the Federal Subsistence Board. Commercial herring seiners, as indicated in testimony before the Board, provided transportation of subsistence users to and from Makhnati Island in the spirit of cooperation between commercial and subsistence fishing communities during the 2008 fishery.

UFA urges the Federal Subsistence Board to reject proposal FP09-05 or any related RAC variations that can compromise well-managed and sustainable commercial fisheries in waters that—except for an oversight in title transfer related to statehood—would clearly be State of Alaska territorial waters.

Mark Vinsel, Executive Director, United Fishermen of Alaska

FP09-06 Executive Summary	
General Description	Proposal FP09-06 seeks to 1) clarify existing Federal regulatory language and ensure consistency with State regulations in the Cook Inlet Area concerning harvesting rainbow/steelhead trout (20 inches or longer), Arctic grayling, and burbot, and 2) ensure rainbow/steelhead trout 20 inches or longer are not incidentally harvested in the combined Kasilof River salmon dip net and rod and reel fishery. *Submitted by the Alaska Department of Fish and Game*
Proposed Regulation	See the analysis for the proposed regulatory language.
Southcentral Regional Council Recommendation	**Oppose**
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses.
ADF&G Comments	See comments following the analysis.
Written Public Comments	**1 Support**

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-06

SOUTHCENTRAL ADVISORY COUNCIL

Oppose. None of the proposed modifications appear to be necessary. Harvest restrictions are already contained within existing Federal fishery regulations. No rainbow/steelhead trout were harvested in the Kasilof River during the 2007 dipnet fishery. Therefore, there is no need to adopt a maximum size limit for retention to protect adult steelhead trout. If harvest restrictions are necessary, in-season action may be taken by the Federal in-season manager.

STAFF ANALYSIS
FP09-06

ISSUES

Proposal FP09-06, submitted by the Alaska Department of Fish and Game (ADF&G), seeks to 1) clarify existing Federal regulatory language and ensure consistency with State regulations in the Cook Inlet Area concerning harvesting rainbow/steelhead trout (20 inches or longer), Arctic grayling, and burbot, and 2) ensure rainbow/steelhead trout 20 inches or longer are not incidentally harvested in the combined Kasilof River salmon dip net and rod and reel fishery.

DISCUSSION

The proponent states that current Federal regulatory language concerning the harvest of rainbow/steelhead trout 20 inches or longer in the Cook Inlet Area could be misinterpreted by Federally qualified subsistence users as allowing accumulation of Federal and State annual harvest limits. The proponent is also concerned that Federally qualified subsistence users could mistakenly think they were allowed to harvest Arctic grayling and burbot. The proponent also requested that to ensure protection of Kasilof River steelhead trout, all rainbow/steelhead trout 20 inches or longer incidentally caught in the Kasilof River salmon dip net fishery be released. However, the proponent no longer feels there is a need to place size restrictions on rainbow/steelhead trout that may be incidentally harvested during the Kasilof River dip net salmon fishery (ADF&G 2008a). This decision was reached after discussion of preliminary results with the investigators of Fisheries Monitoring projects 08-503, Spawning and seasonal distribution of steelhead trout in the Kasilof River watershed, and 08-504, Run-timing, abundance, and genetic composition of adult steelhead trout in Crooked and Nikolai Creeks.

Existing Federal Regulations

> *§___.25(c) Harvest limits. (1) Harvest limits authorized by this section and harvest limits established in State regulations may not be accumulated.*
>
> *§___.25 (c)(3) A harvest limit applies to the number of fish, wildlife, or shellfish that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.*
>
> *§___.27(a)(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative, except as modified by regulations in §ll.27(i). This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.*
>
> *§___.27(i)(10)(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in subsistence net fisheries, you may retain them for subsistence purposes, unless otherwise prohibited or provided for in this section. With jigging*

gear through the ice or rod and reel gear in open waters there is an annual limit of 2 rainbow/ steelhead trout 20 inches or longer, taken from Kenai Peninsula fresh waters.

§___.27(i)(10)(iii) You may not take grayling or burbot for subsistence purposes.

§___.27(i)(10)(iv) You may only take salmon, trout, Dolly Varden, and other char under the authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:

(A) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to a marker on the river at Silver Salmon Rapids. Residents using rod and reel gear may fish with up to 2 baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout taken through August 15. After 200 rainbow/ steelhead trout have been taken in this fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location.

(C) Resident fish species including lake trout, rainbow/steelhead trout, and Dolly Varden/Arctic char may be harvested in Federally managed waters of the Kasilof River drainage. Resident fish species harvested in the Kasilof River drainage under the conditions of a Federal subsistence permit must be marked by removing the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site.

Proposed Federal Regulations

§___.27(i)(10)(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time ***on Federal public lands*** *in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in subsistence net fisheries, you may retain them for subsistence purposes, unless* ***and except as*** *otherwise prohibited or provided for in this section. With jigging gear through the ice or rod and reel gear in open waters there is a~~n~~* ***combined*** *annual limit of 2 rainbow/steelhead trout 20 inches or longer, taken from Kenai Peninsula fresh waters* ***under a subsistence fishing permit and/or State of Alaska sport fishing regulations, except that rainbow/steelhead trout 20 inches or longer may not be taken from the Kasilof River or the Kasilof River drainage by rod and reel or dip net, incidentally or otherwise under a Federal subsistence permit and must be immediately released to the water instead.***

§___.27(i)(10)(iii) You may not take grayling or burbot for subsistence purposes.

*§___.27(i)(10)(iv) You may only take salmon, trout, Dolly Varden, and other char under the authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages****, the seasons, harvest and possession limits, and methods and means for take are modified to permit only the following (except that***

the annual limit of 2 rainbow/steelhead trout 20 inches or longer where not otherwise limited and the prohibition against taking grayling or burbot also apply)*:*

(A*) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from Federal regulatory markers on both sides of the river below the outlet of Tustumena Lake downstream to markers on both sides of the river at Silver Salmon Rapids. Residents using rod and reel gear may fish with up to 2 baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout* ***less than 20 inches long*** *taken through August 15. After 200 rainbow/ steelhead trout have been taken in this fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location.*

(C) Resident fish species including lake trout, rainbow/steelhead trout, and Dolly Varden/ Arctic char may be harvested in Federally managed waters of the Kasilof River drainage ***except as otherwise provided****. Resident fish species harvested in the Kasilof River drainage under the conditions of a Federal subsistence permit must be marked by removing the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site.*

Existing State Regulations

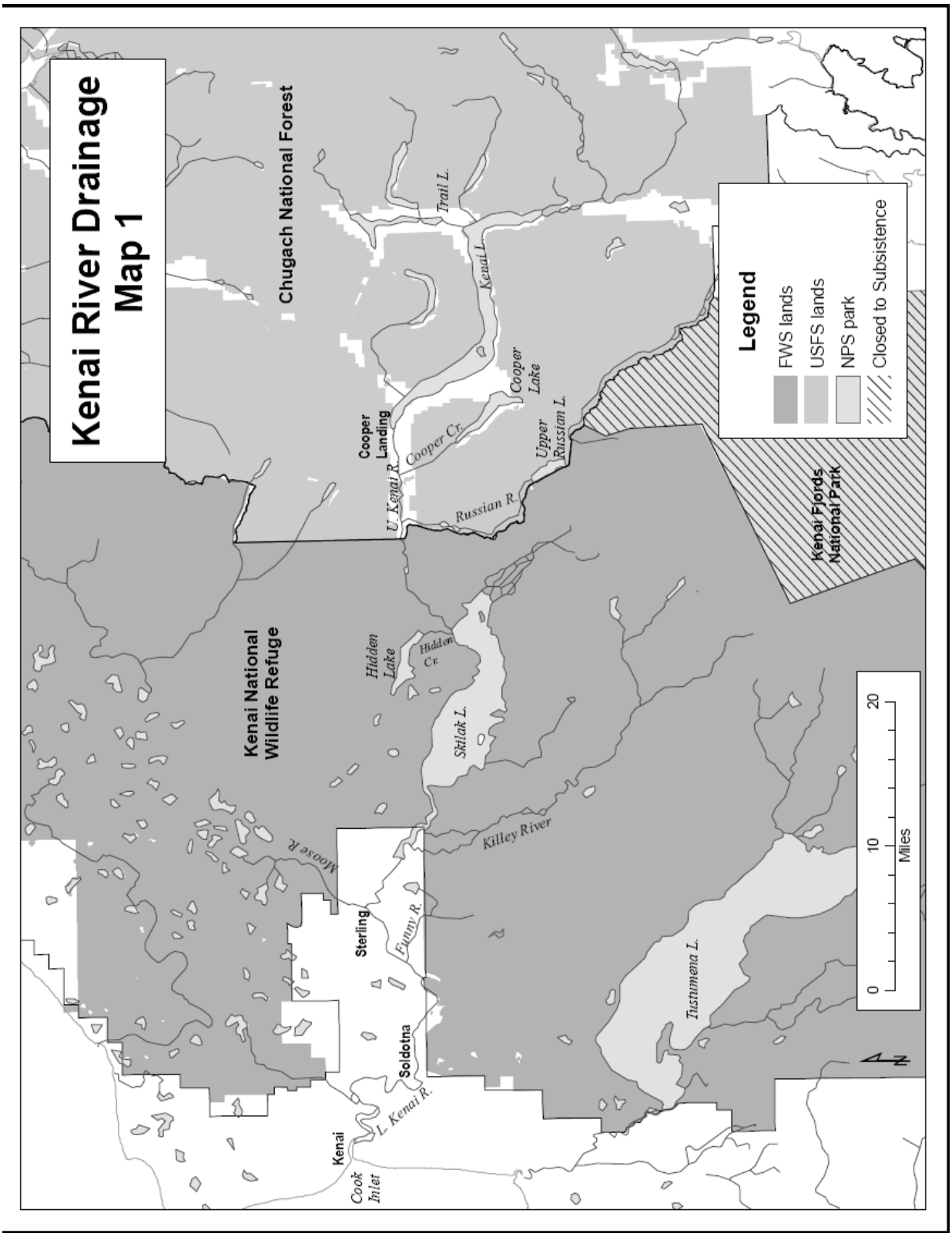
General State of Alaska sport fishing seasons and harvest limits for the Kenai Peninsula freshwater allow for an annual harvest of 2 rainbow/steelhead trout 20 inches or longer. State of Alaska sport fishing regulations for the Kasilof River downstream of the Sterling Highway Bridge and in Crooked Creek prohibit retention of steelhead trout and removing steelhead trout from the water. In the Kasilof River drainage, in flowing waters above the Sterling Highway Bridge, rainbow/steelhead trout harvest is open year round and harvest is limited to 2 per day/2 in possession in flowing waters and 5 per day/ 5 in possession in lakes and ponds. Additionally, general regulations for rainbow trout and steelhead trout apply above the Sterling Highway Bridge, where harvest of one fish greater than 20 inches is allowed per day. This 20-inch length limit effectively addresses steelhead trout. The open fishing season for Crooked Creek is August 1 through December 31 but only one unbaited, single-hook, artificial lure is allowed September 1 through December 31.

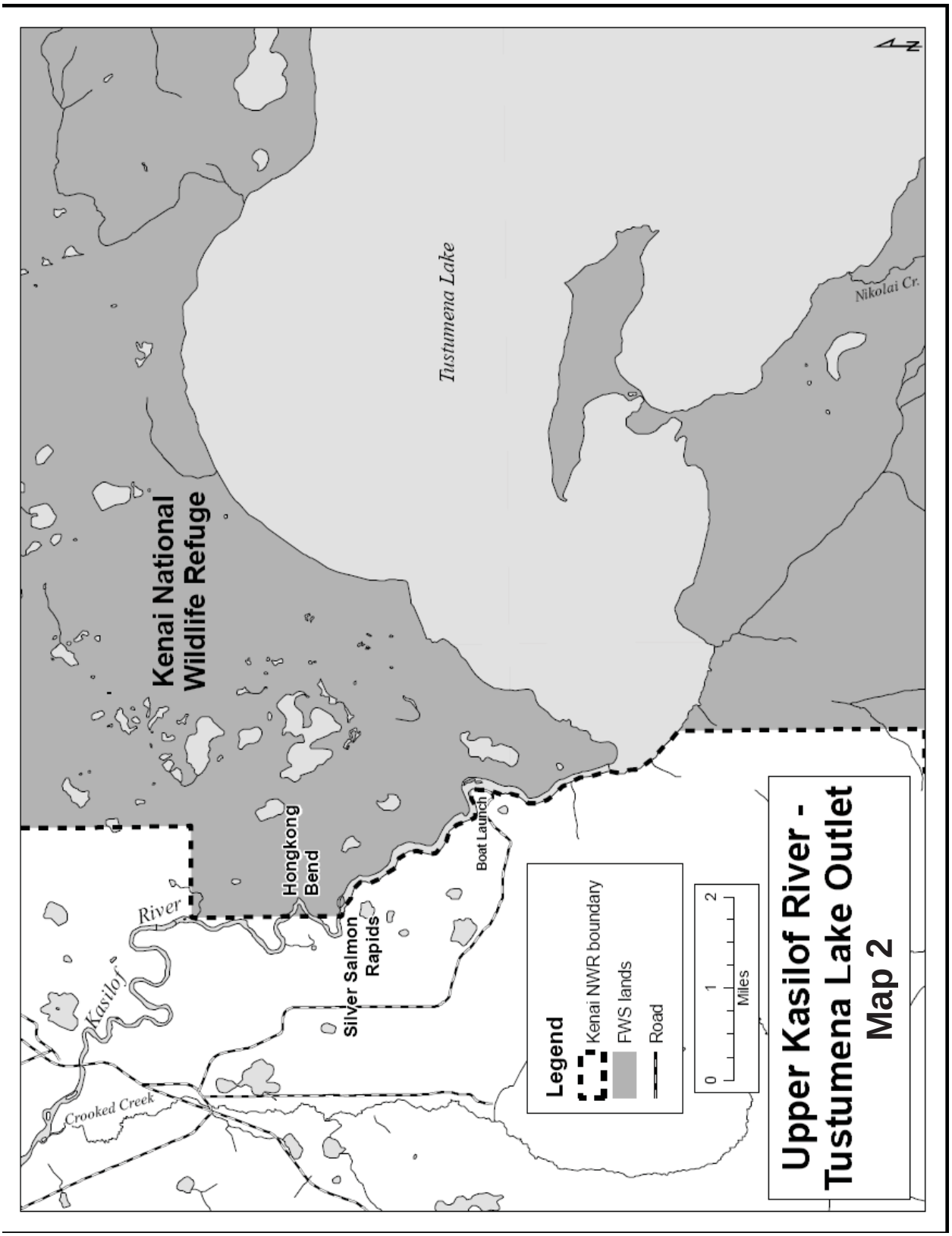
Extent of Federal Public Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 50 CFR 100.3. In the Cook Inlet Area, Federal subsistence fishing regulations apply on waters within or adjacent to Denali National Park and Preserve, Lake Clark National Park, Kenai National Wildlife Refuge, Chugach National Forest, and non-navigable waters within general domain lands managed by the Bureau of Land Management. For the Kenai Peninsula District, this includes waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest (**Map 1)**, and waters within the Kasilof River drainage within the Kenai National Wildlife Refuge **(Map 2).**

Customary and Traditional Use Determinations

In the Kenai Peninsula District for waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest, residents of Cooper Landing and


Kenai River Drainage
Map 1
Chugach National Forest
Kenai National
Wildlife Refuge
Kenai Fjords
National Park
Legend
FWS lands
USFS lands
NPS park
Closed to Subsistence
Trail L.
Kenai L.
Cooper
Lake
Upper
Russian L.
Cooper
Landing
Cooper Cr.
U. Kenai R.
Russian R.
Hidden
Lake
Hidden
Cr.
Skilak L.
Killey River
Moose R.
Sterling
Funny R.
Soldotna
L. Kenai R.
Kenai
Cook
Inlet
Tustumena L.
0
10
20
Miles


Kenai National Wildlife Refuge
Tustumena Lake
Nikolai Cr.
Hongkong Bend
Boat Launch
Silver Salmon Rapids
Kasilof River
Crooked Creek
Legend
Kenai NWR boundary
FWS lands
Road
0
1
2
Miles
Upper Kasilof River - Tustumena Lake Outlet
Map 2

Hope have a positive customary and traditional use determination for all fish and residents of Ninilchik have a positive customary and traditional use determination for salmon. For waters within the Kasilof River drainage within the Kenai National Wildlife Refuge, residents of the community of Ninilchik have positive customary and traditional use determinations for all fish. For the remainder of the Cook Inlet Area, all Federally qualified rural residents of the Cook Inlet Area have a positive and traditional use determination for fish other than salmon, trout, Dolly Varden/char, grayling, and burbot.

Regulatory History

Pre- and Early Statehood Fisheries

Until 1952, freshwater streams in the Kenai Peninsula were open to subsistence fishing, but poorly regulated commercial fisheries decimated salmon runs. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel was allowed for "personal use" (Fall et al. 2004:25–26).

State Fisheries

In 1992, the State classified most of the Cook Inlet Area, including the Kasilof River drainage, as a nonsubsistence area (5 AAC 99.015(3)). Only State sport fisheries are available for the harvest of resident species including steelhead trout in this area. In that portion of the Kasilof River drainage downstream of the Sterling Highway Bridge, rainbow/steelhead trout may not be possessed or retained. If a steelhead trout is caught it must be released immediately, and a person may not remove a rainbow/steelhead trout from the water. Current fishery regulations limit fishing in Crooked Creek, a major tributary of the Kasilof River, from August 1 through December 31, and only unbaited, single hook, artificial lures may be used between September 15 and December 31. In addition, no retention of rainbow or steelhead trout is allowed from Crooked Creek.

The State enhanced (stocked) the steelhead trout run in Crooked Creek in the 1980s to provide additional angling opportunity. Enhancement efforts created a harvest opportunity for steelhead trout unique from other steelhead trout fisheries on the Kenai Peninsula. Sport catches (total harvested and released fish) of steelhead trout in the Kasilof River and Crooked Creek peaked during the mid-1990s and averaged 5,836 fish annually between 1993 and 1995 (Mills 1994, Howe et al. 1995, 1996). During the same period, harvest of steelhead trout averaged 1,397 fish annually. Higher catches during this period were a direct result of the enhancement program.

The enhancement program was terminated in 1993 after concerns were raised about straying of hatchery steelhead trout into the Kenai River. Since termination of the enhancement program, catch has declined and has averaged 579 fish annually between 1997 and 2004. Anticipating a decline in the number of steelhead trout available to anglers, the Alaska Board of Fisheries restricted the fishery within Crooked Creek and the Kasilof River below the Sterling Highway Bridge to catch-and-release beginning in 1996 (Gamblin et al. 2004, Gates and Palmer 2006).

Recent estimated sport fish harvests of steelhead trout above the Sterling Highway Bridge ranged from 0 to 65 fish annually during 2000–2006 **(Table 1)**.

Most steelhead trout are caught and released alive by sport anglers. A 1978 creel census conducted by ADF&G revealed that about 65% of steelhead trout were retained; however, fishing practices by 1988 encouraged catch and release, and the retention rate for steelhead trout had declined to about 25% (ADF&G 2006).

Table 1. Estimated annual sport fishing harvest of steelhead trout in the Kasilof River above the Sterling Highway Bridge, 2000-2006 (ADF&G 2008b).

Year	Estimated harvest
2000	65
2001	26
2002	21
2003	26
2004	0
2005	38
2006	7

Federal Subsistence Fisheries

Federal regulations for subsistence fisheries were first established in 1999. For salmon, trout, and Dolly Varden and other char in Cook Inlet no customary and traditional use determinations were made; therefore, all rural residents of Alaska qualified under the Federal program as eligible subsistence users. In 2002, regulations for take in Cook Inlet were established for salmon, trout, and Dolly Varden and other char. This subsistence fishery required a permit, and seasons, harvest and possession limits, and methods and means for take were identical to State of Alaska sport fishing regulations. The Federal Subsistence Board (Board) established this fishery as an interim measure to provide some subsistence opportunity in Cook Inlet for rural residents, pending collection of additional information on community and area-specific harvest patterns to refine customary and traditional use determinations as well as regulations for take. The Board concluded that this information was necessary because of the unique circumstances of the Kenai Peninsula, where rural communities are interspersed among much larger nonrural communities, and where no subsistence fisheries in the freshwaters of the Kenai Peninsula were allowed for over 50 years.

The Board did not consider any further regulatory proposals for Cook Inlet until 2005. With new information available (Fall et al. 2004), the Board took up consideration of customary and traditional use determinations, and continued to defer proposals for take until completion of those deliberations. During this time, no proposals for harvest were under consideration, and regulations for subsistence harvest were identical to State of Alaska sport fishing regulations with one exception. In November 2006, the Board adopted FSA06-01b which provided a temporary 2006–2007 winter subsistence fishery for resident species in Tustumena Lake. The Board considered fishery regulatory proposals for Cook Inlet in both 2007 and 2008, and adopted several proposals addressing subsistence fisheries for salmon and resident fish species in the Kenai and Kasilof River drainages. These include dip net salmon fisheries at designated sites in the Kenai, Russian, and Kasilof Rivers; rod and reel salmon and resident species fisheries in the Kenai and Kasilof River drainages; an under-the-ice gillnet and jig fishery for resident species in Tustumena Lake, and a temporary fish wheel fishery for salmon in the Kasilof River. The Board did not adopt proposal FP07-10 that would have provided specific Federal subsistence fishing regulations for the harvest of steelhead trout. Therefore, current Federal subsistence regulations for harvest of steelhead trout in the Cook Inlet Area continue to be the same as Alaska sport fishing regulations. There is no open Federal season for Arctic grayling or burbot in the Cook Inlet Area, and no proposals have ever been submitted that seek to alter this.

Biological Background and Harvest History

Steelhead Trout

Steelhead trout undertake the greatest migratory movements of any form of rainbow trout. After one to four years (usually two) of stream life, steelhead trout migrate downstream in the spring and summer and enter the marine environment. Steelhead trout may rear in the ocean for only a few months or for as many as four years before returning to their natal streams to spawn. Steelhead trout exhibit two general patterns of migration into freshwater to spawn. In Alaska, spring steelhead trout typically enter freshwater during April to June, and complete spawning by early summer that same year. Fall steelhead trout typically enter freshwater during August to December, remain in freshwater throughout the winter, and complete spawning during the following spring or early summer. They then migrate back to marine waters and may return to spawn more than once if environmental conditions are favorable. Steelhead trout in lower Cook Inlet drainages are fall fish and are at or near the northern extent of their range (Morrow 1980).

Begich (1999) developed a life history model to evaluate long-term sustainability of steelhead trout returns to the Karluk River. His analysis suggested that steelhead trout populations can sustain mortality rates up to 29%, recruitment is likely to decrease at harvest rates over 37%, and an optimal harvest rate should not exceed 30%. However, sustainable exploitation rates are likely much lower for small coastal populations of steelhead trout at the most northern limits of their range. It is not known whether past enhancement, and the resulting high harvests, affected productivity of these populations. Issues associated with enhancement and mixed-stock (wild and enhanced) harvests elsewhere include straying of hatchery fish into other spawning populations and overharvest of wild fish.

Only a limited amount of information regarding the distribution of steelhead trout populations in the Kasilof River has been available. Kasilof steelhead trout enter freshwater in the fall, spend the winter in either the Kasilof River or Tustumena Lake, and then migrate to tributaries to spawn in the spring. Until this year, Crooked and Nikolai Creeks were the only two streams in the Kasilof River watershed known to support steelhead trout populations (Johnson et al. 2004). Crooked Creek is the major spawning location, and the run used to be enhanced by the stocking of hatchery-produced smolt. Harvest and catch information collected by ADF&G indicate that the adult steelhead trout overwintering in the Kasilof River do not enter Crooked Creek until late April or early May (Gamblin et al. 2004). Resource Monitoring Program projects 07-509 and 08-503 are using radio telemetry to obtain information on the spawning and seasonal distribution of steelhead trout in the Kasilof River. During early October 2007, 79 steelhead trout were fitted with radio transmitters, and their movements were tracked from fixed, shore-based locations as well as from boats and airplanes (Gates 2008, pers. comm.). Most of the tagged steelhead trout were captured in the middle to upper Kasilof River and remained in Federal public waters during late fall, winter, and spring prior to spawning. Tagged steelhead trout were detected at the Tustumena Lake outlet as early as mid October. During the winter tagged steelhead trout remained relatively active, and about half were found in the lake while the remainder occurred in the river between the lake outlet and river km 14. During the spring spawning migration, 36 tagged steelhead trout were detected in Crooked Creek, 6 in Nikolai Creek, 2 in Indian Creek, and 3 in Cole Creek.

Abundance information for Kasilof River steelhead trout populations has also been lacking. Adult steelhead trout were enumerated during May 2004 at the Crooked Creek Hatchery and concurrently at a weir equipped with an underwater video system 219 yards upstream of the hatchery. A total of 206 steelhead trout were enumerated during 2004; however, this was likely a conservative estimate of abundance because weir and video counts were not initiated until May 4 (Gates and Palmer 2006). During 2005, 2006, 2007, and 2008, the USFWS installed and operated underwater video systems in both

Crooked and Nikolai Creeks (Gates and Palmer 2008a, b and c; Gates 2008, pers. comm.). Estimates of spawning adult steelhead trout for Crooked Creek were 379 in 2005, 604 in 2006, 766 in 2007, and 877 in 2008; while estimates for Nikolai Creek were 84 in 2005 (an incomplete count), 373 in 2006, 569 in 2007, and 588 in 2008. Age, sex, and length measurements were also obtained for steelhead trout in Crooked Creek. Females averaged 24.3 inches and males averaged 23.9 inches in length. Only 11 of 246 (4.5%) of the steelhead trout measured were less than 20 inches in length. Male and female sex ratios were nearly equal in late April but shifted to a dominant female component during May. Sex ratios of steelhead trout in both Crooked and Nikolai Creeks favored females during both 2006 and 2007. The female to male ratios for Crooked Creek were 1.3:1 in 2006 1.1:1 in 2007; and for Nikolai Creek were 1.5:1 during both 2006 and 2007.

Most coastal populations of steelhead trout are of limited abundance and are easily over exploited. Steelhead trout are not harvested in personal use or educational fisheries. Sport harvests in the mainstem Kasilof River have ranged from 0 to 65 adult steelhead trout annually, and no harvests have been reported from Tustumena Lake. Juvenile steelhead trout are incidentally hooked and released in the Kasilof River salmon sport fishery, but the impact of hooking mortality on the steelhead trout population is not known. Given the potential of fluctuating stock size and limited historic data for these small coastal stocks, a conservative exploitation is likely no greater than about 10%. Current productivity of these stocks may have been affected by past enhancement efforts and relatively high harvests.

No rainbow/steelhead trout were reported to have been harvested from the Kasilof or Kenai Rivers by Federally qualified subsistence fishers in 2007 or 2008 (Palmer 2008 pers. comm.).

Arctic Grayling

Arctic grayling do not occur naturally on the Kenai Peninsula and were first stocked in the late 1950s in Crescent Lake. Arctic grayling can now be found in lakes within both the Kenai National Wildlife Refuge and Chugach National Forest. They were stocked into Twin Lakes in 1965 and into Lower Fuller Lake in 1967 by ADF&G. Arctic grayling in Twin Lakes came from Crescent Lake, on the Chugach National Forest, while those in Lower Fuller Lake came from Tonsino Lake near Glennallen. Arctic grayling provide limited sport fishing opportunity on the Kenai National Wildlife Refuge because Lower Fuller Lake is only 12 acres (5 hectares) in size and Twin Lakes are accessible only by float-equipped aircraft. Both populations are now maintained through natural reproduction. Within Chugach National Forest, Arctic grayling occur in Grayling Lake (trail access, Seward Highway mile 13.3) and Crescent Lake (trail access, Seward Highway miles 33.1). State regulations for Arctic grayling in Kenai Peninsula freshwaters allow fishing all year with daily limits of 5 per day and 5 in possession and no size limits. There is no open Federal season for Arctic grayling in the Cook Inlet Area.

Burbot

Burbot occur in Skilak and Kenai Lakes, and State regulations provide no closed season or bag and possession limits. Annual State harvest summaries rarely include any reported burbot harvest for the Kenai Peninsula. There is no open Federal season for burbot in the Cook Inlet Area.

Effects of the Proposal

Most of the proposed regulatory language requested by the proponent would duplicate existing Federal regulations and so would have no effect on Federal subsistence fisheries or users. Only the requested modification to the Kasilof River salmon dip net fishery, which would prohibit retention of any rainbow/steelhead trout 20 inches or longer, would change existing Federal regulations. However, existing

Federal regulations for the Kasilof River salmon dip net fishery protect adult steelhead trout through time restrictions. Based on available information, adult steelhead trout are not thought to be present in Federal public waters of the Kasilof River until after August 15. Existing Federal regulations allow harvest of up to 200 rainbow/steelhead trout from June 16 through August 15, but prohibit retention of all rainbow/steelhead trout after August 15. Adopting size restrictions on harvests made prior to August 16 would likely have no effect on either the fishery or the resource. In fact, even the proponent no longer thinks it is necessary to adopt size restrictions since new information indicates steelhead trout spawning populations in the Kasilof River drainage are somewhat more abundant and widely distributed than previously documented (ADF&G 2008a).

OSM CONCLUSION

Oppose Proposal FP09-06.

Justification

None of the proposed modifications to existing Federal regulations appear to be necessary. Four of the five proposed modifications are already contained within existing Federal regulations: 1) Federal subsistence fishing regulations already apply to Federal public waters; 2) the annual limit for rainbow/steelhead trout 20 inches or longer is two fish for all Kenai Peninsula waters; 3) no accumulation of Federal and State steelhead trout harvests is allowed in the Cook Inlet Area; and 4) there is no open Federal subsistence season for Arctic grayling or burbot within the Cook Inlet Area. While existing harvest restrictions could be further emphasized and clarified in the booklet of fisheries regulations provided to Federal subsistence users, there is no need to duplicate language in the Codified Federal Regulations. The fifth proposed change to existing Federal regulations would prohibit retention of rainbow/steelhead trout 20 inches or longer in the Kasilof River salmon dip net fishery from June 16 through August 15. However, the Council recommended and the Board approved these dates to allow Federally qualified subsistence users the opportunity to harvest up to 200 incidentally caught rainbow trout in the dip net fishery while still protecting adult steelhead, which are not usually present in Federal public waters of the Kasilof River until after August 15. No rainbow/steelhead trout were harvested in the Kasilof River salmon dip net fishery during 2007 and, to date, during 2008. Therefore, there appears to be no need to adopt a maximum size limit for retention of rainbow/steelhead trout prior to August 16 to protect adult steelhead trout, and even proponent now agrees that this regulatory change is not needed (ADF&G 2008a).

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INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-06

The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses.

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-06 Cook Inlet Rainbow/Steelhead Trout, Grayling, and Burbot

Introduction: Proposal FP09-06 requests clarifications in federal subsistence regulations to ensure conservation of rainbow/steelhead trout, grayling, and burbot in Kenai Peninsula freshwaters. OSM's draft Staff Analysis to the Southcentral Regional Advisory Council dated August 25, 2008 (and, later, to the Interagency Staff Committee dated October 20, 2008) incorrectly characterized the proposal as duplicative of existing regulatory language and thus unnecessary. That federal analysis likely contributed to the Council's misunderstanding of the intent and justification for the proposal. The following information responds to that federal analysis (and subsequent Analysis to the ISC) and explains the proposal, as well as a possible modification to that proposal, submitted by the Alaska Department of Fish and Game (Department).

Response to OSM Staff Analysis: The OSM staff analysis to the Council (and later to the ISC) regarding FP09-06 concluded the Proposal 1) "duplicates" existing Federal regulations, and is therefore unnecessary, because ". . . 2) the annual limit for rainbow/steelhead trout 20 inches or longer is two fish for all Kenai Peninsula waters; 3) no accumulation of Federal and State steelhead trout annual harvests is allowed in the Cook Inlet Area; and 4) there is no open Federal subsistence season for Arctic grayling or burbot within the Cook Inlet Area." See OSM Preliminary Conclusion opposing FP09-06.

Those conclusions overlook the actual impact of the regulations for fish for the Cook Inlet Area as modified by the Board at its May 2007 meeting, effective June 11, 2007, and as published on December 27, 2007 (Vol. 72, No. 247, Federal Register pp. 73480-82).

First, OSM Staff relies on §___.25(c)(1) of the existing federal regulations, which generally provides that "Harvest limits authorized by this section and harvest limits established in State regulations may not be accumulated." However, section ___.25 ((c) and (a)) contains no specific harvest limits. It provides general definitions of "harvest limits" intended to apply to whatever limitation number is provided elsewhere in the federal regulations for the "Unit or portion of a Unit in which the taking occurs."

Section ___.27 is supposed to provide those limitation numbers for the subsistence taking of fish. In its initial draft Analysis to the Council, OSM Staff cited "§___.27(c)(ii)(16)" for the representation that section ___.27 provides "You may not accumulate harvest limits authorized in this section or § 100.28 with harvest limits authorized under State regulations." However, such a provision does not exist in the current federal regulations, nor has it, apparently, for several years. Instead, §___.27(c)(16)(ii) currently provides [as did §___.27(c)(17)(ii) in previous recent years]:

> ***Except as otherwise provided for in this section*** [___.27], [and] ***if*** you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses ***with a rod and reel*** are the same as for taking fish under

> State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.
>
> (Emphasis added)

In its subsequent Analysis to the ISC, OSM Staff deleted its reliance on §__.27(c)(ii)(16) and substituted §__.27(a)(2), but that general provision similarly provides:

> The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative, ***except as modified by regulations in §__.27(i)***.
>
> (Emphasis added)

Those are very different provisions than the OSM Staff representation that "no accumulation" of annual harvests is allowed in the Cook Inlet Area" by regulation, especially as applied to §___.***27(i)***(10) (the Cook Inlet Area), which the Department's proposal seeks to address. Section ___.27(i)(10), especially as ***modified*** in 2007, has other, much more specific provisions for harvest and possession limits, generally requires a subsistence fishing permit, and involves much more than just fishing with rod and reel. The OSM Staff Analysis of FP09-06 also overlooks that a particular purpose of both §§__.27(a)(2) and 27(c)(16) is to permit other, more specific Area-wide provisions in §___.27(especially §__.27(i)), providing for an accumulation of federal and state limits, such as in the Prince William Sound Area (§___.27(i)(11)). In some past analyses, OSM Staff has taken the position that those more specific provisions override any other, more general provision prohibiting an accumulation of federal and state harvest limits.

That is much of the situation FP09-06 is intended to address, specifically in relation to §___.27(i)(10). Section ___.27(i)(10) applies specifically to the "Cook Inlet Area." Although §§___.27(i)(10)(iii) and (iv) provide generally [1] that grayling or burbot may not be taken within the Area and [2] that the seasons, harvest and possession limits, and methods and means for take of salmon, trout, Dolly Varden, and other char "are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57)," the 2007 regulatory revisions to that section added "***unless modified herein***." They also added, immediately following that revision, "***Additionally*** for Federally managed waters of the Kasilof and Kenai River drainages," and then listed many different, additional methods and limits not contained within state regulations. The "unless modified herein" language was not part of the proposals approved by the Board at its May 2007 meeting. It was an OSM Staff add-on in the published version.

That language, combined with the term "Additionally," creates the impression that the specific limitation provisions which follow in those federal regulations are ***in addition to, modify***, and supersede all other provisions in those regulations including the limitations contained in the Alaska sport fishing regulations. Those "additional" limits, according to the new federal regulations as published, include any number of "Other species incidentally caught during the dip net and rod and reel fishery" (§___.27(i)(10)(iv)(A)) and "Resident fish species including lake trout, rainbow/steelhead trout, and Dolly Varden/Arctic char" (§___.27(i)(10)(iv)(C)) – without expressly excluding grayling or burbot. They also include, in another OSM Staff add-on

to the regulations, "an annual limit of 2 rainbow/steelhead trout 20 inches or longer, taken from Kenai Peninsula freshwaters" using "rod and reel gear" (§___.27(i)(10)(i)), including "in Federally managed waters of the Kasilof River drainage" (§___.27(i)(10)(iv)(C)) – whereas the Board specifically ***rejected*** the proposal (FP07-10) for taking any rainbow/steelhead trout 20 inches or longer by rod and reel from the Kasilof River drainage as a federal subsistence fishery at its May 2007 meeting.

Thus, the real danger exists that these "additional," "modified" provisions, as now written, could be understood to allow harvesting grayling and burbot, although not intended by the Federal Subsistence Board (Board). They could also be construed to use state harvest limits where not intended by the Board, such as to take rainbow/steelhead 20" or longer in the Kasilof rod and reel fishery, whereas the Board specifically rejected FP07-10 to do so, or to add to the state limits (as in all other cases, including taking salmon) – ***thus effectively resulting in allowing the accumulation of state and "additional" federal limits. That also was not the Board's intent,*** according to the record of its May 2007 meeting, and also according to a federal agency Briefing Paper to the Board dated October 20, 2008, and a written directive from the Board to the OSM dated November 24, 2008, which are discussed below.

The purpose of FP09-06 is to undo these errors (as was the purpose of RFRs submitted to the Board on August 10, 2007, and February 25, 2008, not yet acted on to the State's knowledge).

The federal agency Briefing Paper to the Board dated October 20, 2008, entitled "Accumulation of Fish Harvest Limits on the Kenai and Kasilof River" and the Board's written directive to the OSM dated November 24, 2008, acknowledge the problem created by the Board's own regulations. As is stated in the Board's November 24 correspondence:

> The Federal Subsistence Board received a briefing from the Office of Subsistence Management on November 3, 2008, concerning confusion in the interpretation of fisheries regulations for the Kasilof and Kenai river drainages and vicinity. Specifically, during the 2008 fishing season, there was confusion regarding what is allowed in terms of accumulation of harvest limits for fish in this area under Federal subsistence fishing regulations and State sport fishing regulations. Following the briefing, the Board made clear that the intent of the regulations [adopted by the Board] was to **not** allow accumulation of Federal subsistence and State sport harvest limits for fish.
>
> (Emphasis in original)

That Briefing Paper also proposed that the confusion caused by the regulations be addressed by federal agency "informational material" for the 2009 season and, "if it is determined that a regulatory proposal needs to be developed by OSM, that would be brought before the Board for consideration for the 2010 season and beyond." The Board's November 24, 2008, letter takes a similar approach.

Surprisingly, neither the Briefing Paper nor the Board's November 24 correspondence mentions this pending Proposal, FP09-06, and neither proposes to correct the problems in its regulations for the area by making corrections to the regulations, as FP09-06 proposes. The Board need not just rely on the agency development of interim, less reliable "informational material" or wait

until 2010. The Board can use this Proposal, and also modify it as the Board determines appropriate, to correct the problem by correcting the regulations **now**.

In addition, FP09-06 seeks to clarify that the taking of fish in the Cook Inlet Area is restricted to Federal public lands (or, as stated in the OSM Preliminary Conclusion, "Federal public waters"). In its Preliminary Conclusion, OSM Staff concludes this specification is also unnecessary, because "1) Federal subsistence regulations already apply to Federal public waters." True, they do, but the intent of this part of FP09-06 is to prevent those regulations from being read as applying to ***non***-Federal waters. The OSM Staff Analysis overlooks that §___.27(i)(10) actually describes the Cook Inlet Area as including "***all*** waters of Alaska" (not just "Federal waters") enclosed within boundary descriptions provided there which encompass the entire Kenai Peninsula (and more). Section ___.27(i)(10)(i) further states that "Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area," rather than only from "Federal waters" within that Area.

OSM Staff's add-on language to §___.27(i)(10)(i) as re-written in 2007 that "there is an annual limit of 2 rainbow/steelhead trout 20 inches or longer, taken from Kenai Peninsula freshwaters" also does not limit itself to "Federal waters." Only a portion of §___.27(i)(10)(iv) as it was re-written refers to "Federally managed waters," but that is only in the context of the "additional" limits and means specified for the "Kasilof and Kenai River drainages." The Board can also correct that problem now through this Proposal. The Federal Subsistence Program insists that its regulations only apply to Federal public lands, including waters. There is no harm, and much good, in making that point clear in connection with the Cook Inlet Area having the highest concentration of people and fishers, and probably non-federal land, in Alaska.

Therefore, contrary to the OSM Staff's analysis and conclusions for FP09-06, the Proposal's provisions are warranted and necessary. They correct, rather than "duplicate," existing Federal regulations. The existing federal regulations, as written by staff in 2007, could be construed to allow accumulation of state and federal bag limits, including those for mature, breeding age rainbow/steelhead trout 20 inches or longer, and to authorize harvest of grayling and burbot, contrary to the Board's actual intent. The Department's proposal will establish consistency between federal and state regulations, reduce user confusion, and reduce the likelihood of State enforcement actions against federal subsistence users who might mistakenly interpret those regulations to allow accumulation of federal and state bag limits or harvest of grayling and burbot.

Modification: Subsequent to submitting the proposal, additional information became available that indicates slightly higher numbers of distinct steelhead stocks exist within the Kasilof River drainage than previously known. Therefore, the Department believes this proposal might be modified, in the Board's discretion and preferably on a trial basis, to delete the clarification requested in the proposal against taking any rainbow/steelhead trout 20 inches or longer in the dip net and rod and reel subsistence fisheries, and instead allowing the combined take of two such fish per person, as long as the prohibition against accumulation is made clear. The latest information continues to identify relatively small numbers of mature, breeding steelhead stocks within the Kasilof River drainage, including steelhead tracked to Tustemena Lake, but, as noted, that information also indicates the existence of more of those fish than was previously thought.

In addition, eligible federal subsistence users have demonstrated restraint in the reported numbers they have taken of these unique fish.

The State strongly supports continued studies, careful monitoring, and precise harvest reporting of these stocks in order to protect their sustainability. Similar concerns were expressed by federal managers at the Federal Subsistence Board fish proposal meeting in May 2007. This proposed modification results, in part, from the ongoing fisheries steelhead trout research project conducted by the Kenai National Refuge Field office biologist, which should continue, especially if this proposed modification is made.

The Department offers the following modified proposal language for Board consideration, based on those considerations and further consultation with OSM and ISC staff.

Modified Proposed Federal Regulations:

§___.27(i)(10)(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time ***on Federal public lands*** *in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in subsistence net fisheries, you may retain them for subsistence purposes, unless* ***and except as*** *otherwise prohibited or provided for in this section. With jigging gear through the ice or rod and reel gear in open waters there is a* ***combined*** *annual limit of 2 rainbow/steelhead trout 20 inches or longer, taken from Kenai Peninsula fresh waters* ***under a subsistence fishing permit and/or State of Alaska sport fishing regulations. ~~except that rainbow/steelhead trout 20 inches or longer may not be taken from the Kasilof River or the Kasilof River drainage by rod and reel or dip net, incidentally or otherwise under a federal subsistence permit and must be immediately released to the water instead.~~***

§___.27(i)(10)(ii) *You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section).*

§___.27(i)(10)(iii) ***You may not accumulate daily, possession, season, or annual harvest limits for a particular species under Federal subsistence regulations with any other harvest limit specified in State regulation for that species.*** *You may not take grayling or burbot for subsistence purposes****, including through incidental harvest.***

§___.27(i)(10)(iv) You may only take salmon, trout, Dolly Varden, and other char under the authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. ~~*Additionally*~~ ***The following modifications apply to*** *Federally managed waters of the Kasilof and Kenai River drainages:* ~~***the seasons, harvest and possession limits, and methods and means for take are modified to permit only the following (except that the annual limit of 2 rainbow/steelhead trout 20 inches or longer where not otherwise limited and the prohibition against taking grayling or burbot also apply)***~~

(A) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from Federal regulatory markers on both sides of the river below the outlet of Tustumena Lake downstream to markers on both sides of the river at Silver Salmon Rapids. Residents using rod and reel gear may fish with up to 2 baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout ***~~less than 20 inches long~~*** *taken through August 15. After 200 rainbow/steelhead trout have been taken in this fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location.*

(C) Resident fish species including lake trout, rainbow/steelhead trout, and Dolly Varden/Arctic char may be harvested in Federally managed waters of the Kasilof River drainage ***except as otherwise prohibited or provided for in these regulations****. Resident fish species harvested in the Kasilof River drainage under the conditions of a Federal subsistence permit must be marked by removing the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site.*

Impact on Subsistence Users: If proposal FP09-06 is adopted with the modifications suggested above, federal subsistence users will continue to be provided with subsistence opportunities at the levels intended by the Board in its May 2007 actions, as recently clarified by the Board's own correspondence, plus two rainbow/steelhead trout 20" or longer above what the Board intended, on a trial basis, presumably without harming conservation of rainbow/steelhead trout, grayling, or burbot. Adoption of the proposal to clarify unclear regulatory language will prevent taking more than 2 rainbow/steelhead trout 20" or longer per year by preventing accumulation of federal and state limits. If this proposal is adopted, it would also clarify the prohibition on taking of grayling or burbot for federal subsistence on the Kenai Peninsula.

Federal subsistence users could benefit from adoption of proposal FP09-06 because the proposal is aimed at preserving conservation of Kenai Peninsula rainbow/steelhead trout populations, while also allowing the harvest of some large rainbow/steelhead trout. It is also aimed at reducing the likelihood of enforcement actions against federal subsistence users who may not understand that the regulations prohibit federal subsistence harvest of grayling and burbot. Adoption of this modified proposal would not impact the Tustumena through-the-ice gill net fishery.

Enforcement Issues: Adoption of this proposal will reduce the likelihood of state enforcement actions being taken against federal subsistence users who might otherwise incorrectly believe that, after filling their federal limit, they can harvest additional fish in a state fishery that has an annual limit. It also reduces the likelihood of enforcement relating to taking grayling and burbot by making it clearer to federal subsistence users that they can only fish for grayling and burbot

under State sport fishing regulations and must have their State fishing license to legally retain grayling and burbot.

Jurisdiction Issues: The Department requests detailed land status maps that distinctly illustrate land ownership, easements, and exact boundaries within which it is claimed federal regulations would apply and justification for claiming those boundaries. While standing on state and private lands (including state-owned submerged lands), persons must comply with state law and cannot harvest under conflicting federal regulations. Portions of both the upper and lower Kenai and Kasilof rivers are bordered by state or private lands within or adjacent to areas where federal jurisdiction is claimed. It is important that federal subsistence users know exactly where federal regulations are claimed to apply in both watersheds to keep from violating state regulations.

Dual harvest regulations for individual resident species can unintentionally lead to unsustainable harvests and dangerous depletions of discrete fish stocks. Although the State is responsible for sustainable management of all fish stocks in all fresh waters of Alaska, the federal subsistence fisheries target the same freshwater stocks as they cyclically transit in and out of federal public lands. Development of expansive federal harvest regulations targeting the same stocks harvested in State fisheries could lead to long-term damage to these stocks unless severe restrictions or closures of State fisheries are adopted. Such results violate ANILCA Sections 805 and 815. This issue specifically applies to Kenai Peninsula resident fish stocks targeted by both federal and state fisheries.

Opportunity Provided by State: The State has comprehensive and conservative sport fishing regulations that have proven to be successful at maintaining sustainable populations of rainbow/steelhead trout as well as grayling and burbot on the Kenai Peninsula. The Kenai and Kasilof rivers are located in the Anchorage-MatSu-Kenai Nonsubsistence area designation under state law. The State provides the opportunity to retain two rainbow/steelhead trout 20 inches or longer per year from the Kasilof River sport fishery, although the current predominant practice of sport fishers is to "catch-and-release" those fish. Retention of rainbow/steelhead trout in the personal use and educational fisheries of the Kasilof and Kenai rivers is prohibited. Due to the highly restrictive size limits for retaining rainbow trout in all Kenai River state and federal fisheries (less than 16 or 18 inches, depending on the area fished), retention of mature, breeding age rainbow/steelhead trout is prohibited by all Kenai River users.

Conservation Issues: Excessive harvest could occur if federal subsistence users accumulate daily and annual/seasonal harvests from federal subsistence and State fisheries. The existing federal subsistence regulations could be misinterpreted to allow accumulation of State and federal harvest limits, including those of mature, breeding age rainbow/steelhead trout 20" or longer, and to allow a federal subsistence harvest of grayling and burbot.

The small and discrete stocks of rainbow/steelhead trout within the Kasilof River drainage are an example of limited resident species stocks that could suffer from over-exploitation if cumulative harvest limits established by the Federal Board result in increased harvest of larger-sized resident species (20" or longer), which contain the greatest reproductive potential for such populations. The situation is further aggravated by the federal subsistence Tustumena Lake winter ice

fisheries (net and jig fisheries), which may result in adding rainbow/steelhead trout 20" or longer to the take authorized in the Kasilof drainage rod and reel and dip net fisheries.

The Department is seriously concerned with potential over-exploitation of Kasilof River rainbow/steelhead trout stocks based on cumulative effects from all combined fisheries. Though long-standing commercial and personal use fisheries are likely indirect sources of some unknown level of mortality and the sport fishery is a small source of directed mortality on rainbow/steelhead trout stocks, all of these fisheries have been in existence for decades (spanning many rainbow/steelhead trout life cycles), and rainbow/steelhead trout stocks appear to have continued to exist at sustainable levels prior to the recent establishment of the federal subsistence fisheries. Adding multiple directed Federal subsistence harvest-oriented fisheries to currently sustainable, but limited, populations of these fish may require serious conservation measures in the future for all fisheries.

The Department, through the Alaska Board of Fisheries, has developed conservative fisheries management plans, sustainable exploitation rates, and time-proven fishery regulations which establish daily and annual limits and gear restrictions to provide for sustainable harvest of fish stocks. The evolution of each regulation is either based upon historic, hard scientific data or, where such data is not available, on the development of conservative fishing regulations based upon the best information available, including long-term average harvest information which indicates levels of harvest that have a high probability of being sustainable. The new federal fisheries, with less restrictive methods and means, may eventually reach levels of participation which could create conservation concerns even without accumulation of state and federal bag limits. Without a clear prohibition on accumulation of state and federal limits, even much lower levels of participation can be expected to create conservation issues.

Other Issues: Currently a Fishery Information Service project is mid-way through a multi-year study of Kasilof River rainbow/steelhead trout stocks. Even preliminary information from this study may assist with determining when, where, and what numbers of rainbow/steelhead trout pass through various fisheries and if the current absence of harvest size limits in federal subsistence Kasilof River rainbow/steelhead trout fisheries is a biologically sound management decision.

Recommendation: Support the Department's modified proposal.

WRITTEN PUBLIC COMMENTS

Support. Kenai River Sportfishing Association supports this important regulatory change based on its benefit to resource conservation and making consistent State and Federal Regulations. This regulation correction/update is being proposed as a means to ensure the conservation of rainbow/steelhead trout, grayling, and burbot in the Kenai Peninsula fresh waters. Additionally it removes confusing language in the current regulation that could be construed to permit accumulation of State and Federal bag limits. We believe this regulation will also establish consistency between Federal and State regulations and be consistent with the direction of the Federal Subsistence Board in May 2007. Furthermore, this proposal clarifies regulatory language and reduces the likelihood of State enforcement actions against Federal subsistence users who might mistakenly interpret the regulation to allow accumulation of Federal and State bag limits.

Kenai River Sportfishing Association

FP09-07 Executive Summary	
General Description	Proposal FP09-07 requests that Ninilchik be added to the communities with a positive customary and traditional use determination for harvesting all fish in the Kenai Peninsula District waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest. *Submitted by Ninilchik Traditional Council*
Proposed Regulation	*COOK INLET AREA* *Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.* — *All fish* — *Residents of the communities of* ***Ninilchik,*** *Hope and Cooper Landing.* ~~**Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.*~~ — ~~*Salmon*~~ — ~~*Residents of the community of Ninilchik*~~ *NOTE: This portion of the regulation that should be deleted was not included in the proposal book in error.
Southcentral Regional Council Recommendation	**Support** Proposal FP09-07 **with modification** to specify use of Dolly Varden/Arctic char, lake trout, and rainbow/steelhead only. The modified regulation should read: *COOK INLET AREA* *Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.* — *All fish* — *Residents of the communities Hope and Cooper Landing.* *Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.* — *Salmon,* ***Dolly Varden/ Arctic char, lake trout, and rainbow/ steelhead trout*** — *Residents of the community of Ninilchik*

continued on next page

WP09-07 Executive Summary (continued)	
Interagency Staff Committee Comments	See comments following the analysis.
ADF&G Comments	**Oppose**
Written Public Comments	**1 Oppose**

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-07

SOUTHCENTRAL REGIONAL ADVISORY COUNCIL

Support Proposal FP09-11 **with modification** to also include Dolly Varden/Arctic char, lake trout, and rainbow/steelhead only.

The modified regulation should read:

COOK INLET AREA		
Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.	*All fish*	*Residents of the communities of Hope and Cooper Landing.*
Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.	*Salmon,* ***Dolly Varden/ Arctic char, lake trout, and rainbow/ steelhead trout***	*Residents of the community of Ninilchik*

There is documented use of fish in the Kenai River by residents of Ninilchik. It is the nature of subsistence to use what is harvested. Harvest of resources is opportunistic, often associated with other subsistence activities. The Council recommended the customary and traditional use determination be limited to fresh water fish species that were historically harvested prior to 1952 when subsistence fishing was allowed.

STAFF ANALYSIS
FP09-07

ISSUES

Proposal FP09-07, submitted by the Ninilchik Traditional Council (NTC), requests that Ninilchik be added to the communities with a positive customary and traditional use determination for harvesting all fish in the Kenai Peninsula District waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest (**Map 1**).

DISCUSSION

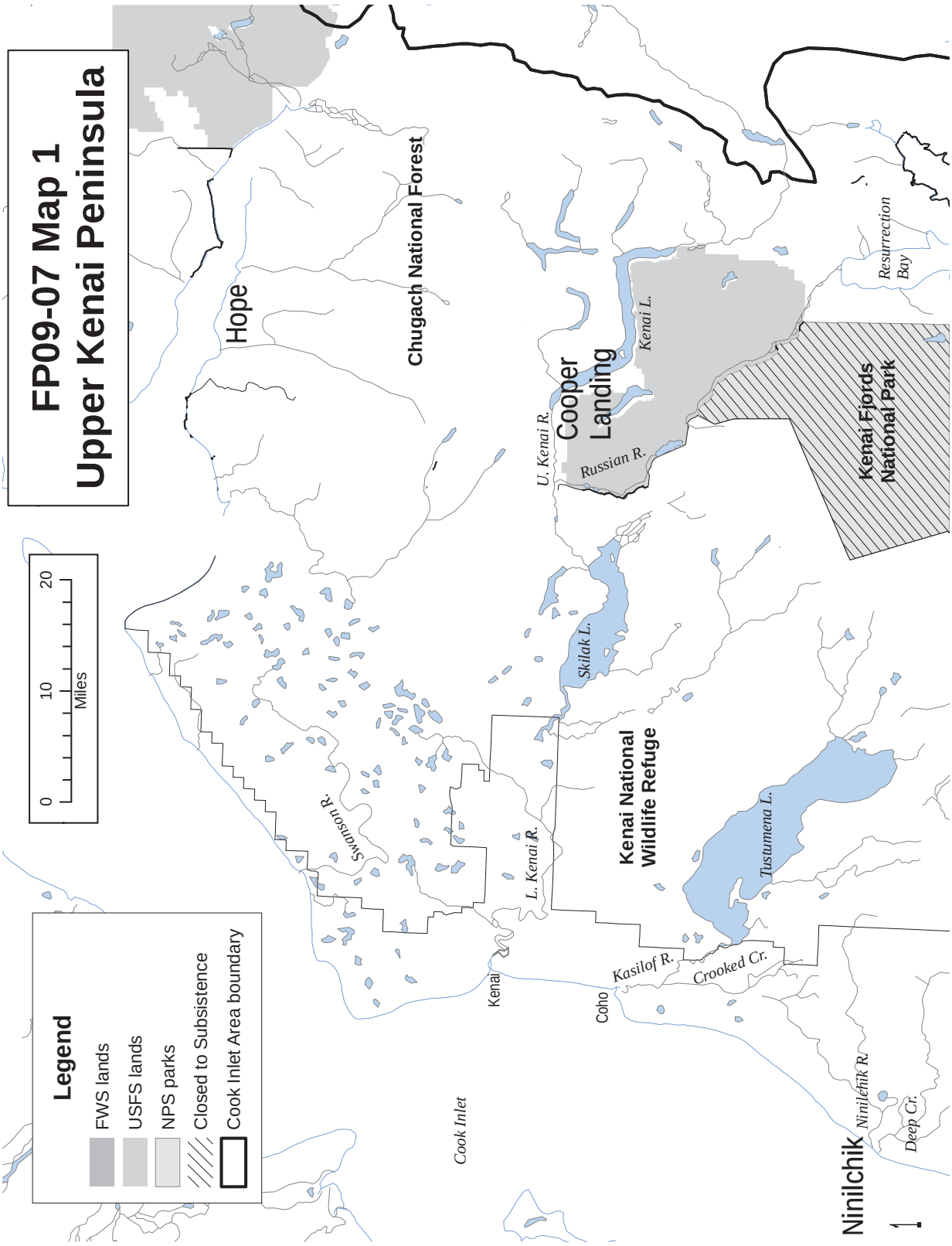
Ninilchik has a positive customary and traditional use determination for all fish in the Kasilof River drainage. In the Kenai River Area (defined as the waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest), the Federal Subsistence Board (Board) has recognized the customary and traditional uses of salmon, but not resident species, by Ninilchik residents. The proponent of Proposal FP09-07 requests that the Board recognize the community of Ninilchik's customary and traditional uses of all fish in the Kenai River Area, similar to its uses of salmon.

The analysis for this proposal incorporates information from ethnographic studies, public testimony and written comments at meetings of the Southcentral Alaska Subsistence Regional Advisory Council (Southcentral Council) and the Board, and the staff analyses of: 1) Proposal FP06-09, addressed by the Board at its January 2006 public meeting (FSB 2006a); 2) Fisheries requests for reconsideration (FRFR) FRFR06-02/03/08, addressed by the Board at its November 2006 work session (FSB 2006b); 3) FRFR06-09 addressed by the Board at its May 2, 2007 public meeting (FSB 2007a) and again at its September 13, 2007 work session (FSB 2007b); and 4) Proposal FP07-28 (FSB 2007c) addressed by the Board at its May 8, 2007 public meeting.

The analysis for this proposal focuses on the uses of resident fish (nonsalmon freshwater fish) in the Federal public waters of the Kenai River Area by the residents of Ninilchik.

Existing Federal Regulation

COOK INLET AREA		
Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.	*All fish*	*Residents of the communities of Hope and Cooper Landing.*
Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.	*Salmon*	*Residents of the community of Ninilchik*


FP09-07 Map 1
Upper Kenai Peninsula
Legend
FWS lands
USFS lands
NPS parks
Closed to Subsistence
Cook Inlet Area boundary
0
10
20
Miles
Hope
Chugach National Forest
Cooper Landing
U. Kenai R.
Russian R.
Kenai L.
Resurrection Bay
Kenai Fjords National Park
Skilak L.
Kenai National Wildlife Refuge
Swanson R.
L. Kenai R.
Tustumena L.
Kenai
Kasilof R.
Crooked Cr.
Coho
Cook Inlet
Ninilchik
Niniljchik R.
Deep Cr.
1

Proposed Federal Regulation

COOK INLET AREA		
Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.	*All fish*	*Residents of the communities of **Ninilchik,** Hope and Cooper Landing.*
~~**Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.*~~	~~*Salmon*~~	~~*Residents of the community of Ninilchik*~~

*NOTE: This portion of the regulation that should be deleted was not included in the proposal book in error.

Extent of Federal Public Waters

The areas affected by this proposal include the Federal public waters in the Cook Inlet Area north of and including the Kenai River within the Kenai Peninsula District within the exterior boundaries of the Kenai National Wildlife Refuge (Kenai Refuge) and the Chugach National Forest (**Map 1)** (referred to as the Kenai River Area in this analysis).

For purposes of this discussion, the phrase "Federal public waters" is defined as those waters described under 50 CFR 100.3.

Regulatory History

Until 1952, freshwater streams in the Kenai Peninsula were open to subsistence fishing. In 1952, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations and only rod and reel or hook or line were allowed for "personal use" (Fall et al. 2004:25–26). Since 1952, it has been illegal for Ninilchik residents to subsistence fish for resident fish species in the Kenai River Area. (See Proposal FP06-09 staff analysis for a more complete regulatory history of fishing in the Kenai Peninsula, as well as Appendix B, Table 1 in FP06-09, for a summary of the history of Cook Inlet subsistence and personal use salmon fishing regulations).

Federal regulations for subsistence fisheries were first established in 1999 when the Federal program assumed limited fisheries management authority. For salmon, trout, Dolly Varden, and char in Cook Inlet there were no customary and traditional use determinations; therefore, all rural residents of Alaska qualified under the Federal program as eligible subsistence users.

In 2001, the Board considered Proposal FP02-11a, submitted by NTC, Stephen Vanek and Fred H. Bahr, that requested a positive customary and traditional use determination for all fish and all shellfish in the Cook Inlet Area for residents of the Kenai Peninsula District. The Board deferred making decisions on the use of fish in the Cook Inlet Area until the completion of an OSM funded study, Cook Inlet Customary and Traditional Subsistence Fisheries Assessment (Fall et al. 2004), because the Board felt that historical, contemporary, community and area specific harvest use information was needed to properly analyze customary and traditional patterns of use in the Cook Inlet region.

During the 2001 cycle, there was also a staff analysis for the combined proposals, Proposal FP01-13/33, on the customary and traditional use portion for salmon only. During its December 2000 meeting,

the Board deferred action until after a decision on the Kenai Peninsula rural determination request for reconsideration (RFR). A decision on the Kenai Peninsula rural RFR was made on June 28, 2001, rescinding the May 2000 decision which made the whole Kenai Peninsula rural and reverting to the 1991 rural determinations. Therefore, during the 2002 regulatory cycle, the customary and traditional use analysis for salmon was revised to include only communities determined to be rural as a result of the June 2001 RFR decision and an analysis of the use of the other requested fish species was incorporated. A decision on the customary and traditional use of shellfish also was deferred.

In December 2001, the Board considered Proposals FP02-11b through 14b for seasons and harvest limits for fish in the Cook Inlet Area (FSB 2001:97–105). The Board adopted regulations that allowed the subsistence take of salmon, Dolly Varden, trout, and char with seasons, harvests, possession limits, and methods and means that were the same as for the taking of fish under State of Alaska sport fishing regulations (FSB 2001:102–105). The modification of the proposal was considered an interim step while needed information gathering and further analysis continued (FSB 2001:103).

The Board did not consider any further regulatory proposals for the Cook Inlet Area until 2006, thus from 2002 to 2006 all Federally qualified rural residents, including Ninilchik, could harvest fish under Federal subsistence regulations in the Cook Inlet Area. With new information available (Fall et al. 2004), the Board took up consideration of customary and traditional use determinations, and continued to defer proposals for take until completion of those deliberations. During this time, no proposals for harvest were under consideration, and regulations for subsistence harvest were identical to State of Alaska sport fishing regulations with the exception of the temporary 2006-2007 winter subsistence fishery for resident species in Tustumena Lake that was established in November 2006 when the Board adopted fisheries special action FSA06-01b.

In January 2006, the Board considered Proposal FP06-09 (FSB 2006a), the deferred proposal from the 2002 regulatory cycle, Proposal FP02-11a. Proposal FP06-09 was submitted by NTC, Stephen Vanek and Fred H. Bahr and requested a positive customary and traditional use determination for all fish and all shellfish in the Cook Inlet Area for residents of the Kenai Peninsula District. During the January 2006 public meeting, the Board applied the eight factors to determine specific communities' use in Cook Inlet as described in §___ .16 (50 CFR 100.16(b) and 36 CFR 242.16(b)). Those customary and traditional use determinations for Cook Inlet are largely based upon information provided by Fall et al. 2004 and presented in the staff analysis for Proposal FP06-09.

At its January 2006 public Board meeting, the Board made a positive customary and traditional use determination for: 1) Hope and Cooper Landing for all fish in the Federal public waters of the Kenai Peninsula District, north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest; and 2) Ninilchik for all fish in the Federal public waters of the Kasilof River drainage. During consideration of Proposal FP06-09, both ADF&G and NTC indicated that they could provide additional relevant information; hence, the Board's characterization of the customary and traditional use determinations as "interim." The intent in using the word interim was to "signal to everybody that we're not done yet, we're just starting, and that's all it was meant to do" (FSB 2006a:507–508). The Board's decision provided an opportunity to gather information to provide a more definitive picture of historic and current use patterns on Federal public lands throughout the various drainages on the Peninsula and to better integrate the information from the two BIA funded studies that were not fully available when Dr. Fall's study was completed (FSB 2006a:500–501).

In May of 2006, the State of Alaska and the NTC submitted requests for reconsideration (FRFR06-02/03/08) of the Board's customary and traditional use determinations made in January 2006. The Board

revisited its decision in a work session on November 16–17, 2006 and added Ninilchik to the customary and traditional use determination for all fish for the Kenai River Area. The ADF&G, Division of Subsistence, provided new information on the levels of use of the Kenai River Area by Ninilchik residents (FSB 2006b).

In a public meeting on May 2, 2007, the Board considered FRFR06-09, submitted by the State of Alaska, which requested that the Board reconsider and rescind its decision of November 17, 2006 on FRFR06-02/03/08 that recognized the community of Ninilchik's customary and traditional use of all fish in the Kenai Peninsula District. The Board considered this RFR, but a motion to amend the existing customary and traditional use determination failed and the original decision from November 2006 remained in place (FSB 2007a). On September 13, 2007, the Board met in a work session to correct a voting error from the May 2, 2007 meeting that did not comply with Robert's Rules of Order. The Board modified the existing determination through a new motion that found a positive customary and traditional use determination for the community of Ninilchik for salmon only in the Kenai River Area (FSB 2007b). The customary and traditional use determination for Hope and Cooper Landing residents for all fish in the Kenai River Area remained in place as did the customary and traditional use determination for Ninilchik residents for all fish in the Kasilof River drainage.

On May 8, 2007, the Board considered a proposal from the Kenai River Sportfishing Association (Proposal FP07-28) requesting that the positive customary and traditional use determinations for taking all fish by Hope, Cooper Landing, and Ninilchik residents be rescinded in the Kenai Peninsula District and that there be no Federal subsistence priority for all fish. The Board rejected this proposal (FSB 2007c).

The Board considered fishery regulatory harvest proposals for Cook Inlet in both 2007 and 2008, and adopted several proposals establishing subsistence fisheries for salmon and resident fish species in the Kenai and Kasilof River drainages. These include dip net salmon fisheries at designated sites in the Kenai, Russian, and Kasilof Rivers; rod and reel salmon and resident species fisheries in the Kenai and Kasilof River drainages; an under-the-ice gillnet and jig resident species fishery in Tustumena Lake, and a temporary fish wheel salmon fishery in the Kasilof River. The Board considered, but did not adopt, a 2008 proposal that would have allowed dip net fishing from the shore in the Moose Range Meadows site of the Kenai River (FWS 2007 and FSB 2007d).

Community Characteristics

The only community under consideration in this analysis is Ninilchik, which is comprised of two census-designated places (CDPs): Ninilchik and Happy Valley. ADF&G subsistence use studies conducted in 2002–03 on Ninilchik included Ninilchik and Happy Valley CDPs (Fall et al. 2004). Thus, when reference is made to Ninilchik in this analysis, it includes people living in the Ninilchik CDP as well as the Happy Valley CDP. In the 2000 U.S. Census, Ninilchik CDP had 772 year-round, permanent residents and Happy Valley had 489 year-round permanent residents (U.S. Census 2001); thus the total population for the two CDPs from the last census under consideration in this analysis is 1,261. In 2008, the estimated population was 778 in Ninilchik CDP and 495 in Happy Valley CDP. There is one school in Ninilchik with 186 students (ADCED 2008).

The Ninilchik tribal government (which is the NTC) is the only local government in the Ninilchik area. There is no local municipal government, although Ninilchik is part of the Kenai Peninsula Borough. The community of Ninilchik is similar to road-connected rural portions of the Copper River Basin where the local governments of communities are tribal, not municipal (Stratton and Georgette 1984).

The Ninilchik tribe had about 652 tribal members in 2006. Of these, about 333 members (51%) lived in the Ninilchik tribal area (Wolfe 2006a).

Ninilchik is within the traditional territory of the Dena'ina Athabaskans, which dates to around 1000 A.D, extends from Kachemak Bay on the Kenai Peninsula, west across Cook Inlet to the Stony River and northeast to the Susitna Basin, as well as the traditional territory of the Sugpiaq (Alutiiq) which includes the southern portion of the Kenai Peninsula, bridging the Sugpiaq territories of Prince William Sound with Kodiak Island and the Alaska Peninsula (de Laguna 1934, Krauss 1982, Stanek 1980).

Non-Native settlement of the Kenai Peninsula began in the 18th century with the Russians and the fur trade, and later mining efforts in Kachemak Bay. At the end of the 19th century, commercial fishing brought about new settlements, such as the herring saltery at Seldovia in 1896. The next major non-Native settlement period began during the Gold Rush era at the end of the 19th century. With the construction of roads and local oil development after about 1950, the population of the Kenai Peninsula increased substantially through in-migration of people born outside Alaska.

Brief history of Ninilchik

The original Ninilchik inhabitants came to the Kenai Peninsula and settled within the traditional territory of two Alaska Native cultures and areas used by non-Native settlers. Long-term residents of Ninilchik trace their origins to the descendents of Alaska Natives (predominately Sugpiaq from Kodiak Island) who married Russian American Company employees and settled on the Kenai Peninsula in the Ninilchik area in 1847 (Wolfe 2006a, b; Arndt 1993). The children of these "mixed marriages" between the Russians and the Alaska Natives were commonly called "Creoles" by the Russians (Fall et al. 2004:33). By 1861, Ninilchik had become a "Creole" settlement because all of the original Russians had died (Arndt 1993:42). The U.S. Census in 1880 enumerated the population at Ninilchik as 53 "Creoles" (Fall et al. 2004:33). In 1890, the U.S. Census noted that there were "50 Russian Creoles and a small number of Tnaina [sic] tribe" (U.S. Census 1890:69). There were 16 "Indians" enumerated (U.S. Census 1890). During the last 160 years, the Ninilchik population has increased and become connected by marriage and birth with other Dena'ina (including the Kenaitze) and Sugpiaq (Alutiiq) groups in the Cook Inlet Area.

By 2006, from the 53 people counted in 1880, the Ninilchik tribe numbered about 652, of which about 333 members live in the Ninilchik tribal area (Wolfe 2006a) (which includes Happy Valley [Williams 2006, pers. comm.]).

The Ninilchik area's population has grown in the past 50 years through in-migration, becoming more demographically diverse (Wolfe 2006a). Georgette (1983:183–184) concluded that Ninilchik's expanding population accounts for an increasing diversity of values, beliefs, and resource harvest and use patterns among its residents. Reed (1985:96) noted that for many long-term Ninilchik residents resource harvesting was an important household economic strategy, but for newcomers resource harvesting was more for recreational purposes. These differences between Ninilchik residents contribute to the lack of a community-wide pattern of resource use, beliefs, and values. For long-term residents, "resource utilization was a tradition and production was family based…for others it was productive recreation or . . . leisure time" (Reed 1985:96).

Happy Valley CDP is a census designated place created by the U.S. Census, but also is considered a residential extension of Ninilchik. Happy Valley was first noted in 1950 by the U.S. Geological Survey as a "geographic location" (ADCED 2008). There are no facilities, no schools, no post office, and no government. Students who reside in Happy Valley go to school in Ninilchik and Happy Valley residents receive their mail in Ninilchik.

Eight Factors for Determining Customary and Traditional Uses

A community or area's customary and traditional use is generally exemplified through the eight factors: (1) a long-term, consistent pattern of use, excluding interruptions beyond the control of the community or area; (2) a pattern of use recurring in specific seasons for many years; (3) a pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics; (4) the consistent harvest and use of fish or wildlife as related to past methods and means of taking: near, or reasonably accessible from the community or area; (5) a means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate; (6) a pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation; (7) a pattern of use in which the harvest is shared or distributed within a definable community of persons; and (8) a pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

The Board makes customary and traditional use determinations based on a holistic application of these eight factors (50 CFR 100.16(b) and 36 CFR 242.16(b)). In addition, the Board takes into consideration the reports and recommendations of any appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources (50 CFR 100.16(b) and 36 CFR 242.16(b)). The Board makes customary and traditional use determinations for the sole purpose of recognizing the pool of users who meet the eight factors. The Board does not use such determinations for resource management or restricting harvest. If a conservation concern exists for a particular population, the Board addresses that concern through the imposition of harvest limitations or seasonal restrictions rather than by limiting the customary and traditional use finding.

Specific information on each of the eight factors is not required because a community or area seeking a customary and traditional use determination only has to "generally exhibit" the eight factors (50 CFR 100.16(b) and 36 CFR 242.16(b)). However, subtitles are used in this analysis as a management tool to organize the information.

The subsistence way of life is based on contingencies and opportunity (what is available). Many, but not all, subsistence harvests include the bulk harvest and processing of large quantities of fish and wildlife at a time for long-term consumption. However, subsistence harvests may also include small incidental harvests during travel. Because the subsistence way of life is based on contingencies and opportunity, the fact that a harvest may be quite low does not indicate these fisheries are not customary and traditional.

It is important to note that customary and traditional use determinations are based on the uses of the resource and not on the users. The Federal subsistence management program applies to Federally-qualified rural users and does not differentiate between Alaska Native and non-Natives.

Long-term, consistent pattern of use, excluding interruptions beyond the control of the community

When making a customary and traditional use determination, one of the factors considered by the Board is a long-term consistent pattern of use, excluding interruptions beyond the control of the community or area (50 C.F.R. § 100.16(b)(1)). This is an important point to consider, because interruptions beyond the control of Kenai Peninsula residents could affect their harvest and use of fishery resources in Federal public waters. First, subsistence fishing in the freshwaters of the Kenai Peninsula was prohibited from 1952 until the Federal Subsistence Board created a subsistence fishery in 2002 which mirrored the State sport fishing regulations. Second, since statehood, legal availability of fishery resources in Federal

public waters has been defined by State sport fishing regulations, and these regulations do not provide for harvest of all species or harvest by traditional methods and means. In this area, preferred traditional methods and means include nets, an efficient method and means of harvest for subsistence users who traditionally harvest as much fish as they can process at once. Rod and reel is considered a traditional subsistence gear type under Federal subsistence regulations and under State regulations in some parts of the State. In some cases under State regulations, rod and reel have been recognized as traditional gear in places where fish fences or traps are no longer a legal means to harvest fish and rod and reel is the only legal alternative (Williams et al. 2005:31–32). Georgette (1983:185) noted that some Ninilchik residents said they have never learned to fish successfully with a rod and reel and that fishing with a rod and reel consumes too much of their time.

In 1878, the first commercial fish packing operation was established at the Kenai River and the first canneries were established in the 1880s. The fur trade had collapsed, the Russian era had ended, and more American non-Natives had moved into the area. Many Dena'ina fished fall runs of coho salmon up-river along the Kenai and Kasilof river drainages at traditional settlements like Stepanka at Skilak Lake in the Kenai River drainage or camps along the Killey and other tributary rivers (both Skilak Lake and the Killey River are within the Kenai Refuge). The gold rush in the late 1890s brought the first major in-migration of Euro-Americans to the Kenai Peninsula with settlements created at Kenai, Knik, and Hope. With the arrival of the Euro-Americans came new diseases, which caused declines in the Dena'ina population.

Documentation of early fish uses by the Ninilchik residents is not extensive. However, references can be found regarding the fish uses by the Kenaitze. In a book published in 1897 by Henry Elliott, Our Arctic Province, Elliott notes that the Kenaitze in Cook Inlet were "fairly independent of salt water, and seldom pass many hours upon it, except in traveling and trading with one another, and the Creoles: they are, however, very expert at fresh-water fishing through holes in the ice for trout in the thousand and one lakes, large and small, which are so common in their country" (Elliott 1897:91).

In the early 1900s, the annual subsistence cycle of the Dena'ina included commercial fishing in the inlet and the mouth of the Kenai River during the spring and summer, and going up-river in the fall to harvest coho salmon, fish for freshwater fish, hunt moose, and trap furbearers. This continued until the 1940s with the creation of the Kenai National Moose Range. In the early 1940s, many Dena'ina continued their traditional pattern of going to the Stepanka camps. By this time, the Dena'ina population had been so decimated by disease that most Dena'ina were predominantly (but not exclusively) in Kenai (Fall et al. 2004:16–20).

Some of the Dena'ina—the Kenaitze—who lived in the Kenai Peninsula are related to those who settled in Ninilchik (FSB 2006b). There were Kenaitze who married into families in Ninilchik as documented in public testimony (FSB 2006a, b) and in Agrafena's Children, a history of Ninilchik's families, where reference is made to the intermarriage between Ninilchik and Kenai people, and the intermingling of families (Leman 1993:576) as well as in the U.S. Census in 1890 (see previous discussion under "community characteristics"). As a member of the public from Kenai testified to the Board, "Maybe they're [Ninilchik] not brothers and sisters, maybe they're cousins. But the bottom line is, they're the same [as Kenaitze], you know, whether they originated in a Russian village—they more than likely originated with Native women and they are our brothers and sisters in some sort of way" (FSB 2006b:100). A member of the Ninilchik Tribe testified, "I was born in Anchorage…raised in Ninilchik until third grade and grew up in Kenai. About 1967 I was a member of the Kenaitze Tribe until just about six years ago when I transferred back to Ninilchik. And the reason I point that out is it just shows some of

the ties between the tribes. You know, my grandmother was a Darian from the Kenaitze Tribe. My aunt is a member of the Kenaitze Tribe. I got uncles that are members of the Kenaitze Tribe" (FSB 2006b:97).

In 1941, the Kenai Moose Range was established and only those who had permits could use the cabins previously built by trappers and subsistence fishermen. However, Alaska Natives continued to use their ancestral locations for trapping, hunting, and fishing activities in spite of Federal rules prohibiting use of cabins on refuge lands. Land claim hearings were held in the 1970s attesting to traditional uses of lands and cabins along the upper Kenai River, and fishing between the Kenai River and Tustumena Lake into the mid-1940s (Fall et al. 2004:22).

Homesteaders arrived in the Kenai Peninsula, including the Ninilchik area, in the early 1930s, 1940s, and after World War II and commercial and subsistence fishing became important aspects of their annual cycle. Fall et al. noted, "In freshwater, gillnets and seines were used in the Kenai, Skilak, and Tustumena lakes to harvest lake trout, Arctic grayling, whitefish, and [Dolly Varden] char" (Fall et al. 2004:20–21). Trappers in the upper Kenai River area maintained gillnets in the upper Kenai and caught salmon and trout. Other uses mentioned included taking coho salmon through the ice in the winter and steelhead below Skilak Lake in the late 1940s and early 1950s (Fall et al. 2004:20–21).

There were no legally recognized subsistence fisheries in the freshwaters of the Kenai Peninsula for 50 years. In 1952, gillnets were made illegal in many freshwaters, thus the Kenai Peninsula Dena'ina ceased using gillnets in the fall occupation of their upriver sites. The Stepanka fishery (Skilak Lake), that had been a traditional, long-standing source of salmon for the Dena'ina (Kenaitze) Indians, was closed. As a result of this closure, snagging became the primary harvest method, but snagging was made illegal in 1973. Local residents turned to sport fishing without snagging, and continued to fish the beaches of Cook Inlet with gillnets in the subsistence fishery. In the 1970s, sport fishing had grown and the Kenai had become a favorite spot for sport fishing. The Kenai Peninsula is unique in that rural communities are interspersed among much larger nonrural communities. By the early 1980s the Alaska Board of Fisheries added more restrictions on subsistence and personal use fishing along the Cook Inlet beaches, closing beaches to subsistence gillnetting. By the mid-1990s, only two personal use fisheries remained at the mouth of the Kenai and Kasilof rivers (Fall et al. 2004:22–23; 30).

Regulations relating to areas, seasons, and methods have changed consistently over the past 54 years, and have become more restrictive. The changing regulations have affected Ninilchik's access to fish resources over time and have encouraged multiple opportunistic approaches towards obtaining subsistence resources. For example, in the case of salmon, as regulations and conditions have changed, residents have adapted their traditional practices to continue to obtain salmon—trade it, buy it, or harvest it in new ways under various regulatory regimes (Georgette 1983:186–187). In 1993, ten years after the above cited-report was written, a State judge ordered the development of educational fisheries for the NTC, the Knik Tribal Council, the Native Village of Eklutna and the Kenaitze Tribe (Loshbaugh 1993:1, 14). These fisheries were established as the result of lawsuit filed by the Kenaitze Tribe. The educational fishery provided another means for residents of Ninilchik to harvest salmon using gillnets. The educational permits, however, were a compromise: "Villagers—who have traditionally focused on early-run king salmon will be catching mostly reds under the proposed permit" (Loshbaugh 1993:14).

Other historic evidence of use of fish by the Dena'ina is provided in a 1975 study of historic sites in the Cook Inlet Region. Nine locations on Federal public lands are described which may have signs of fish camps or caches (Brelsford 1975:38–65, maps). One of these sites at the Russian River campground in the Chugach National Forest was thoroughly investigated and a faunal analysis completed, identifying fish bones used by the Riverine Kachemak and Dena'ina peoples (Corbett 1999:6).

Leman (1993:3–4) makes a number of references to Ninilchik fishing such as a fish trip to Humpy Point south of the Kasilof River outside of present-day Federal public waters, (Leman 1993:218); an article about Ninilchik fisherman making fish traps by hand for river fishing (Leman 1993:374); a poem regarding sharing the first Chinook salmon of the year with everyone in the community (Leman 1993:72); and an article referencing how the Ninilchik people traditionally focused on the early-run Chinook salmon (Leman 1993:71). Reference is also made to Ninilchik residents often walking long distances—one reference to a man walking from Ninilchik to Homer, and another reference to a woman walking 40 miles packing furs from Ninilchik to Kenai (Leman 1993:362). Testimony at the January 2006 Board meeting noted that early settlers would walk long distances to harvest subsistence resources, including fish (FSB 2006a).

In 1994, NTC conducted a survey of NTC households regarding lifetime subsistence harvest areas pre-1994. NTC households harvested nonsalmon throughout the Kenai Peninsula (NTC 1994). NTC interviewed 25 heads of households out of about 100 NTC households whose household heads were NTC members (Brelsford 1994). Respondents marked areas used during their lifetime for harvesting subsistence resources. These maps were combined to create maps combining all of the respondents' lifetime use areas (NTC 1994; Wolfe 2006a). This technique of gathering information on the use area of a community is also used by ADF&G Division of Subsistence (Wolfe 2006a). These lifetime-uses present patterns which are similar to those of other rural communities in Alaska in that the use areas are contiguous to the community and accessible by boat and ground travel rather than aircraft, showing an efficiency and economy of effort. Use areas are not always constant and adapt to new transportation networks, i.e., the construction of roads, which can become a more efficient means for accessing subsistence resources (Wolfe 2006a). Chen (2005:2) noted that Ninilchik residents would travel by dogteam to pursue subsistence activities, including freshwater fishing, in the interior of the Peninsula.

In 2002/2003, Fall et al. (2004) conducted a survey of 100 Ninilchik households selected at random, constituting a 17% sample of the 577 known permanent households in that community. Based on the survey data, Fall and his co-authors at ADF&G Division of Subsistence described the community's pattern of use in terms of percentage of households. Community estimates were made using the findings from the random sample, expanding them to account for that fraction of the community that was not surveyed[1].

The following discussion uses percentages from the expansion of the sample survey data in order for the sample data to represent the whole community. Percentage figures are followed by the estimated number of Ninilchik households each percentage figure represents.

In surveys conducted in 2003 by Fall et al., respondents were asked three questions—but no reference was made regarding what species of fish. The questions were:

(1) Have you ever fished in Federal public waters?

(2) Have you fished in the Federal public waters of the Kenai River or Swanson River Areas, in your lifetime?

[1]Thus, 1% of the sampled households and represents an estimated 5.77 households (1% of the 577 total households, which equals 5.77). As it pertains to harvest estimates, as an example, if the total number of moose harvested by the surveyed households equals 3, then the estimated community harvest would equal 17.31 (3 x 5.77). This method of expansion is used frequently in analyzing survey results, and is the standard method of ADF&G Division of Subsistence in describing community harvest patterns. This method was also used in Fall et al.'s 1998 research in Ninilchik (Fall et al. 2000).

(3) If yes to fishing in the Kenai and Swanson River areas, how often did you fish in these waters? Three choices were provided to answer question (3): Frequent use, Intermittent Use, and Infrequent Use.

Federal Public Waters, Responses to Questions 1 and 3: According to the findings in Fall et al. (2006), 28% of Ninilchik's households (an estimated 162 households out of a community total of 577 households), have fished at some point in their lifetime in Federal public waters. Of these estimated 162 households, 62% (100 households) reported frequent use ("about every year") of Federal public waters. These approximately 100 households represented 17% of all Ninilchik households. Sport fishing or ice fishing accounted for all of this use (subsistence fishing was not permitted) (**Table 1).**

Federal Public Waters of Kenai River, Responses to Questions 2 and 3: In response to questions about use of the Federal public waters of the Kenai River, 21% (an estimated 121 households) of the 577 households of the community of Ninilchik said they had fished in these waters at some point in their lifetime. Frequent use "about every year" of Federal public waters was reported by 13% (an estimated 73 households) of the community. Sport fishing or ice fishing accounted for all of this use. Another 4% (an estimated 23 households) of the 577 Ninilchik households reported intermittent use of the Kenai River ("on and off over the years") and 4% (an estimated 23 households) reported infrequent use ("1 or 2 years") (**Table 1).**

Swanson River, Responses to Questions 2 and 3: Thirteen percent (75 households) of the 577 households of the community of Ninilchik reported some use of the Swanson River area. "Frequent use" was reported by 10% (an estimated 56 households) of the 577 households of the community of Ninilchik (Fall et al. 2006:5) (**Table 1).**

Ninilchik's percentages of lifetime use of the Kenai Peninsula Area from Fall's study (Fall et al. 2006) are consistent with other research conducted in Alaska. In 1992 and 1993, ADF&G, Division of Subsistence, analyzed 1988 Tongass Resource Use Cooperative Study (TRUCS) data and made intensity-of-use maps as part of the Tongass Subsistence Studies project. In TRUCS, about 1,450 households in 30 Southeast Alaska communities were interviewed. Respondents were asked to draw lines on maps showing where they hunted, fished, or gathered during their residence in the community; mapping was done by species or resource category. In the 1992 and 1993 analysis, subsistence use was categorized on these maps according to the percentage of households that used an area (by species or resource category) during the time they lived in the study community. The analytic maps provided a measure of intensity of use based on the mapped data provided by respondents. Other research in many Southeast Alaska communities had documented intensity of use. Intensity of use was categorized by less than 1%, 1–5%, 5–10%, 10–15%, 15–20%, 20–25%, and greater than 25%. In general, only a small amount of the total community use area was found to be used by more than 25% of the households interviewed. This research finding was unexpected at the time and may result from a number of characteristics of subsistence harvesting in Southeast Alaska: 1) a good deal of subsistence harvesting is specialized, meaning that not all households hunt seals or deer and not all households catch salmon or halibut, 2) high harvesting households account for a large portion of total fish and wildlife taken for subsistence, and a relatively small number of high harvesting households may account for most of the use of a community's subsistence use area, and 3) cultural factors may determine geographical use, for example, clan members may mainly harvest in their clan areas or family members may be site loyal and not use the whole of a community subsistence use area (Schroeder 2006, pers. comm.).

Table 1. Characteristics of sampled Ninilchik households that have ever fished in Federal waters of the Kenai River or Swanson River areas.

	Kenai River	Swanson River area	Any Federal waters
Number of households in random sample using areas[1]	21	13	28
Total number of Ninilchik households	121	75	162
Percentage of all Ninilchik households[2]	21%	13%	28%
Percentage of users with "frequent use" [3]	60%	75%	62%
Total number of Ninilchik households	73	56	100
Percentage of all Ninilchik households[2]	13%	10%	17%
Percentage of users with "intermittent use" [4]	20%	8%	15%
Total number of Ninilchik households	24	1	24
Percentage of all Ninilchik households[2]	4%	<1%	4%
Percentage of users with "infrequent use" [5]	20%	17%	23%
Total number of Ninilchik households	24	2	37
Percentage of all Ninilchik households[2]	4%	<1%	<6%

Source: Adapted from Fall et al. 2006:6.

[1] Of the 100 households interviewed. This is 17.3% of the study area's population in 2003; weighting factor=5.77.

[2] Total number of Ninilchik households = 577.

[3] Frequent = "about every year."

[4] Intermittent = "on and off over the years."

[5] Infrequent = "1 or 2 years."

Contemporary fish harvests

The history summarized above, ethnographic reports, NTC (1994 and 1999) and Fall et al.'s (2006) lifetime use information all indicate that fish have been consistently used by Ninilchik residents from subsistence, personal use, commercial, or sport fisheries. Their use of fish is based on three traditions, the uses of fish by the Dena'ina, the Sugpiaq (Alutiiq), and the early settlers and homesteaders. In a 1980 study of the Cook Inlet subsistence salmon fishery, Braund (1980:79) noted a diversity of users with a core group with a history of significant use in all Cook Inlet communities.

In 2002–03, ADF&G Division of Subsistence conducted a subsistence use study, *The Cook Inlet Customary and Traditional Subsistence Fisheries Assessment* (Fall et al. 2004), which provided a thorough review and assessment of Cook Inlet's subsistence fisheries, both past and present for a number

of communities including Ninilchik. This study documented household use, harvest, harvest locations, and other information pertinent to subsistence fishing in Cook Inlet. As in the 1998 study, this 2002–03 study combined Ninilchik's uses with Happy Valley CDP uses. The household surveys show that salmon is the primary fish resource. Of the resident fish species, Dolly Varden, rainbow, lake trout, and steelhead trout are harvested by the residents of Ninilchik. Lake trout are only found in Federal public waters. The pattern of use of resident fish species reflects the distribution of the resources in the Cook Inlet Area. A few isolated populations of Arctic char and Dolly Varden occur in lakes in the Swanson River area and Cooper Lake. Burbot also has a limited presence in Juneau Lake (near Cooper Landing) (Nelson 2001, pers. comm.). Ninilchik households did not report any harvest of burbot in 2002 to 2003 (Fall et al. 2004:66–70), nor from 1994 to 1999, as documented by NTC in their study (NTC 1999).

In ADF&G's 2002–03 study, in all of Cook Inlet 21% of Ninilchik households fished for resident species in freshwater (an estimated 2,368 pounds). This harvest was comprised of Dolly Varden (897 pounds), lake trout (444 pounds), rainbow trout (1,101 pounds), and pike (17 pounds) (pike were introduced illegally in the early 1970s in the Soldotna Creek drainage [Nelson 2005, pers. comm.]). In the one year of study, none of Ninilchik's residents who were surveyed harvested Arctic grayling (also introduced to the Kenai Peninsula), whitefish, steelhead, or burbot (Fall et al. 2004:66–70; **Table 2**). NTC also found no harvest of whitefish, steelhead, or burbot from 1994 to 1999, and an average Arctic grayling harvest per household of only 6 pounds (NTC 1999).

The Southcentral Council met in September 2008 to make their recommendation on Proposal FP09-07. During the discussion, staff prompted Council members to list the species of the most importance (SCRAC 2008) and consequently the Council recommended modifying the proposed regulation by making the customary and traditional use determination species specific by replacing "all fish" with Dolly Varden, Arctic char, lake trout, rainbow and steelhead trout. Other fish that may occur in the Kenai River Area are Arctic grayling and burbot (as well as pike, which were illegally introduced). It should be noted that in the 1994 NTC study conducted of lifetime uses, Ninilchik residents reported harvesting in their lifetimes an annual average of 6 pounds of Arctic grayling, 18 pounds of burbot, and 81 pounds of pike (Table 3). Arctic grayling and pike were harvested in Units 13A, 14A, and Units 15A, 15B, and 15C and burbot was harvested in Units 15B and 15C (Table 3). It is unknown if any of these harvests were on Federal public lands. Under current Federal regulations, there is no Federal open season for Arctic grayling and burbot. Pike can be harvested with no limits under State regulations.

The historic pattern of use of fish resources continues today by Ninilchik residents. An ADF&G study documenting resource uses in 1998 in Ninilchik (and Happy Valley CDP) found that 96% of households harvested subsistence resources, with a per capita harvest of 164 pounds (Fall et al. 2000:137). Resident fish species each made up anywhere from 2% to 30% of the per capita pounds of fish harvested. The highest harvest was Dolly Varden (estimated at 665 pounds). Lake trout were also harvested (estimated at 33 pounds) (ADF&G 2001). Marine fish, primarily halibut, provided the remainder of the fish harvests (Fall et al. 2004:44–45). Georgette (1983:185) noted that Ninilchik residents have found that competing with crowds of sport fishermen has made harvesting fish difficult.

Fall et al. (2004) compared the estimated harvests of all fish, as measured in pounds per capita to other recent years for which survey data were available. Estimated harvests by Ninilchik residents in 2002/2003 were similar to 1998, the other most recent study year (Ninilchik: 80.8 pounds in 1998, 81.7 pounds in 2002/2003) (Fall et al. 2004:54). Although there are limitations to using single years' harvest data, these comparisons clearly indicate that the community of Ninilchik has a pattern of use of harvesting fish.

Table 2. Estimated Harvest and Use of Fish, Ninilchik, 2002.

Resource Name	Percentage of Households					Pounds Harvested			Amount Harvested		95% Conf Limit (+/-)	
	Use	Att	Harv	Recv	Give	Total	Mean HH	Percapita	Total	Mean HH	Harvest	Percapita
All Resources	96.0	75.0	73.0	76.0	58.0	132,562	229.7	81.8	132,562 lbs	229.7	27%	24%
Fish	96.0	75.0	73.0	76.0	58.0	132,562	229.7	81.8	132,562 lbs	229.7	27%	24%
Salmon	92.0	72.0	69.0	58.0	46.0	75,958	131.6	46.8	16,589 ea.	28.8	31%	24%
Chum Salmon	7.0	6.0	6.0	1.0	1.0	3,677	6.4	2.3	681 ea.	1.2	154%	153%
Coho Salmon	55.0	44.0	41.0	25.0	18.0	18,062	31.3	11.1	3,474 ea.	6.0	32%	32%
Chinook Salmon	59.0	50.0	38.0	32.0	19.0	13,594	23.6	8.4	877 ea.	1.5	34%	31%
Pink Salmon	20.0	12.0	12.0	10.0	6.0	7,118	12.3	4.4	2,966 ea.	5.1	111%	110%
Sockeye Salmon	80.0	56.0	54.0	38.0	35.0	33,507	58.1	20.7	8,592 ea.	14.9	27%	24%
Non-Salmon Fish	87.0	64.0	60.0	58.0	43.0	56,604	98.1	34.9	56,604 lbs	98.1	36%	32%
Herring	2.0	1.0	1.0	1.0	0.0	519	0.9	0.3	87 gal	0.2	180%	175%
Herring Roe	1.0	0.0	0.0	1.0	0.0	0	0.0	0.0	0 gal	0.0	0%	0%
Herring Sac Roe	1.0	0.0	0.0	1.0	0.0	0	0.0	0.0	0 gal	0.0	0%	0%
Herring Spawn on Kelp	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0 gal	0.0	0%	0%
Smelt	17.0	5.0	5.0	12.0	2.0	769	1.3	0.5	237 gal	0.4	97%	98%
Eulachon (hooligan, candlefish)	17.0	5.0	5.0	12.0	2.0	769	1.3	0.5	237 gal	0.4	97%	98%
Cod	11.0	10.0	9.0	3.0	2.0	2,561	4.4	1.6	854 ea.	1.5	79%	82%
Pacific Cod (gray)	10.0	9.0	8.0	3.0	2.0	2,530	4.4	1.6	790 ea.	1.4	84%	83%
Pacific Tom Cod	3.0	4.0	3.0	0.0	0.0	32	0.1	0.0	63 ea.	0.1	114%	115%
Walleye Pollock (whiting)	1.0	0.0	0.0	1.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Flounder	1.0	1.0	1.0	0.0	0.0	692	1.2	0.4	231 ea.	0.4	180%	181%
Starry Flounder	1.0	1.0	1.0	0.0	0.0	692	1.2	0.4	231 ea.	0.4	180%	181%
Greenling	8.0	8.0	7.0	4.0	0.0	842	1.5	0.5	237 ea.	0.4	113%	120%
Lingcod	6.0	5.0	5.0	2.0	0.0	808	1.4	0.5	202 ea.	0.4	130%	125%
Unknown Greenling	2.0	3.0	2.0	2.0	0.0	35	0.1	0.0	35 ea.	0.1	153%	152%
Halibut	84.0	56.0	53.0	50.0	42.0	46,766	81.1	28.8	46,766 lbs	81.1	37%	33%
Rockfish	12.0	8.0	8.0	4.0	2.0	1,944	3.4	1.2	998 ea.	1.7	109%	94%
Black Rockfish	8.0	7.0	7.0	1.0	2.0	1,229	2.1	0.8	819 ea.	1.4	129%	129%
Red Rockfish	6.0	3.0	3.0	3.0	1.0	715	1.2	0.4	179 ea.	0.3	136%	130%
Unknown Rockfish	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Sablefish (black cod)	2.0	1.0	1.0	1.0	0.0	89	0.2	0.1	29 ea.	0.1	180%	182%
Shark	1.0	1.0	1.0	0.0	0.0	52	0.1	0.0	6 ea.	0.0	180%	175%
Unknown Shark	1.0	1.0	1.0	0.0	0.0	52	0.1	0.0	6 ea.	0.0	180%	175%
Burbot	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Char	16.0	19.0	15.0	3.0	5.0	1,341	2.3	0.8	958 ea.	1.7	51%	52%
Dolly Varden	13.0	15.0	12.0	2.0	4.0	897	1.6	0.6	640 ea.	1.1	56%	57%
Lake Trout	7.0	9.0	6.0	2.0	3.0	444	0.8	0.3	317 ea.	0.6	94%	95%
Grayling	0.0	0.0	0.0	0.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Pike	1.0	1.0	1.0	0.0	0.0	17	0.0	0.0	6 ea.	0.0	180%	181%
Unknown Pike	1.0	1.0	1.0	0.0	0.0	17	0.0	0.0	6 ea.	0.0	180%	181%
Trout	9.0	8.0	6.0	4.0	2.0	1,010	1.8	0.6	721 ea.	1.3	88%	88%
Rainbow Trout	8.0	8.0	6.0	3.0	2.0	1,010	1.8	0.6	721 ea.	1.3	88%	88%
Steelhead	1.0	0.0	0.0	1.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Whitefish	2.0	0.0	0.0	2.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%
Unknown Whitefish	2.0	0.0	0.0	2.0	0.0	0	0.0	0.0	0 ea.	0.0	0%	0%

SOURCE: Fall et al. 2004.

In 1999, NTC conducted another survey to assess Ninilchik's harvests and use areas from 1994 to 1999. Rather than designating the use by drainage, unit and subunits were used. Harvest use patterns including location of harvests, species harvested, and amounts harvested have changed significantly over the lifetime of Ninilchik residents. NTC's 1994 study of lifetime uses indicated large use areas for nonsalmon fish species throughout the entire Kenai Peninsula, however, resident species were not distinguished from other nonsalmon. In the NTC study conducted of uses from 1994 to 1999, respondents were harvesting significantly less fish and their use area had narrowed to predominantly Unit 15C (which predominantly focuses on Kenai Refuge lands in the Kasilof River drainage). For example, the average number of Dolly Varden harvested per household dropped from 22 in the lifetime use study to 12 in the 1994 to 1999 study (**Table 3**).

In 2002, the Board adopted subsistence fishing regulations for the Cook Inlet Area that mirrored sport fishing regulations. Permits were issued to Ninilchik residents beginning in 2007 and 30 Ninilchik residents were issued Kenai River salmon permits. In the Kenai River Area, Ninilchik only has a positive customary and traditional use determination for salmon, thus only salmon permits were issued. The remainder of the permits issued to Ninilchik residents were for the Kasilof River drainage. Five permits were issued in the 2006/2007 Tustemena winter ice fishery. Reported harvests were 20 lake trout and 6

Table 3. Ninilchik Tribal Council households' harvests of resident species of fish: lifetime (pre-1994) and 1994 to 1999[1, 2] (NTC 2006).

		Percentage of Households				Resident Species Harvested	
Species	**Study Period**	**Using (%)**	**Trying (%)**	**Receiving (%)**	**Sharing (%)**	**Av. Lbs. Harvest Per HH Per Year**	**Unit Harvested**
Grayling	Lifetime to 1994	24	20	8	12	6	13A, 14A, 15A, B, & C
	1994–1999	10	14	0	5	11	15B &C
Burbot	Lifetime to 1994	12	8	12	12	18	15B & C
	1994–1999	0	0	0	0	0	—
Pike	Lifetime to 1994	20	16	20	16	81	13A, 14A, 15A, B, & C
	1994–1999	0	0	0	0	0	—
Dolly Varden	Lifetime to 1994	52	48	44	44	31	7,8,13A, 14A C, 15 B, & C
	1994–1999	43	48	19	14	17	15C
Lake Trout	Lifetime to 1994	52	44	40	32	28	7,8,13A, 14A & C, 15A, B, & C
	1994–1999	10	14	0	0	8	15C
Cutthroat Trout	Lifetime to 1994	4	4	4	4	63	14A & C, 15A, B, & C
	1994–1999	5	5	5	4	14	15C
Rainbow Trout	Lifetime to 1994	64	60	32	48	27	7,13A, 14A, B & C, 15A, B, & C
	1994–1999	38	43	19	10	20	15C

[1] The methods used in this study were consistent with the standard methods used by the Alaska Department of Fish and Game, Division of Subsistence for mapping use areas (Wolfe 2006a and 2006b).
[2] These results cannot be expanded to the entire community because the sample was nonrandom.

Dolly Varden (Palmer 2008, pers. comm.). It is unknown if the majority of subsistence users in Ninilchik were aware that beginning in 2002 they could harvest fish under Federal subsistence regulations. Since the Federal regulations mirrored sport fishing regulations until 2008 in seasons, methods and means, and harvest limits, there were few advantages in having a Federal permit prior to 2008.

Seasons of use

Since statehood, salmon season openings have been regulated (see Proposal FP06-09 staff analysis, Appendix B, Tables 2–5 for the regulatory history of the Cook Inlet Area affecting subsistence fisheries).

For resident fish, harvests occurred throughout the year according to availability and associated activities, with some species targeted for ice fishing activities in the winter. Three harvest patterns of rainbow trout and Dolly Varden occur: the harvest in the winter months through the ice with rod and reel, the harvest in the summer months in local creeks and lakes, and the occasional harvest such as rod and reel salmon fishing associated with moose hunting and other activities. The preference is to take Dolly Varden and rainbow trout in June and September (Fall et al. 2004:52; NTC 2006).

Methods and means

Subsistence fishing is typically characterized by the use of efficient gear, such as set gillnets, operated by family groups in traditional use areas accessible to families (Wolfe 2006b). Traditional methods used to harvest freshwater fish were with bone fishhooks, later replaced by metal hooks and nets set in ponds and lakes, often under the ice (Townsend 1981:626). The traditional Sugpiaq (Alutiiq) methods included "traps, weirs, spears, hooks, and hook and line, and all were used in streams" (ADF&G 1992a:18). Russell (1994:14) notes that Ninilchik residents used dry spruce as poles in fish traps.

In the historic period, fish were taken in the spring with basket traps or in the winter through the ice with hook and line. Ninilchik residents also remember using fish spears made from straight pieces of wood to harvest fish upstream—but not at the mouth of the stream (Russell 1994:21). Rod and reel and dip net were also used (Fall et al. 2000 and 2004).

Rod and reel and hook and line ice fishing are the current methods used (and the only methods allowed) for harvesting resident fish. Lake trout and rainbow trout are harvested by ice fishing; all of the resident species are harvested by rod and reel (Fall et al. 2004:108).

Areas of use

Regulatory actions in 1952 prohibited subsistence fishing except by rod and reel in waters of the Kenai Refuge and the Chugach National Forest. Until the Federal subsistence fishery was established, Ninilchik residents have only been able to harvest fish through freshwater sport fisheries, in marine waters subsistence net fisheries for late coho salmon until 1978, homepack from commercial harvests, personal use fishing with dip nets at the mouths of some rivers since 1981 and with gillnets since 1985, and educational fisheries since 1993. The rapid growth of the Kenai Peninsula, increased infrastructure, influx of Euro-Americans, construction of roads, as well as regulatory restrictions on subsistence uses have had a profound effect on the subsistence use patterns of Kenai Peninsula communities.

In the lifetimes of Ninilchik residents, much of the population on the Kenai Peninsula has changed from a large percentage of indigenous people, homesteaders, and commercial fishers, to a population dominated by newcomers who have full-time jobs and are interested in recreational fishing and hunting. Not surprisingly, hunting and fishing subsistence use patterns have changed as well. Long-term Ninilchik

residents and their families now live in permanent homes and no longer move seasonally to hunt and fish. Their fish harvests are now generally concentrated close to their homes, particularly when fish are abundant.

Research conducted by Fall et al. (2004) documented fish harvest locations in 2002/2003 for Ninilchik (and other communities not under consideration in this analysis), including specific information regarding fish harvests from Federal public waters (Fall et al. 2004:58–59; 113). Fall et al. (2000) also documented fish harvest areas in an earlier 1998 study, but not whether or not the harvest occurred in Federal public waters. It should be noted that these two years of data provided similar results, and are likely indicative of recent use patterns of the studied communities (Fall et al. 2004). This information supplements historical information and public testimony. NTC (1999) also provided maps of each of Ninilchik's respondent's fish harvest areas, but these areas were not broken down by species.

Harvest of resident fish species by Ninilchik residents generally occurs in the lakes, creeks, and rivers near the community, unless associated with hunting or other harvesting activities. This pattern of use where multiple activities occur at the same time—berry picking, fishing for Dolly Varden and rainbow trout while hunting—is common among subsistence users in Alaska. By their very nature, subsistence users are opportunistic and harvest what is available, unlike sport users who generally target single resources. In addition, subsistence fishing is opportunistic and fishing is not limited to a specific species. If a Ninilchik resident is fishing for salmon (for which they have a positive customary and traditional use determination) either by net or any other method, and a resident species such as rainbow trout is harvested, it will be harvested. In all waters in the Kenai River Area where salmon are available, resident species of fish are also available, thus it is quite likely that an incidental take of a resident species will occur when fishing for salmon.

Fall et al. (2000:121) conducted a survey in 1998 in Ninilchik that documented general use areas for fish harvests. For the 1998 study, surveys were conducted with 100 households selected at random, constituting a 19% sample of the 527 known permanent households in that community. In 1998, an estimated 2% of Ninilchik households (an estimated 11 households) harvested salmon in wildlife Unit 15A on the Kenai Refuge, 3% (an estimated 16 households) in Unit 15B on the Kenai Refuge, and 2% (an estimated 11 households) in Unit 7 on the Kenai Refuge and the Chugach National Forest (Fall et al. 2000). These findings were not specific to drainages, but rather specific to wildlife management units. Findings of Fall et al.'s study (2004) done in Ninilchik 2002/2003 were consistent with the 1998 study findings. In the more recent study, 100 randomly selected households represented a 17% sample of the total community of 577 households (Fall et al. 2004:11). These 100 surveys provided the data from which community estimates were made. In 2002/2003, 4% (an estimated 23 households) of Ninilchik households harvested sockeye salmon in the Russian River. An estimated 1% (an estimated 6 households) harvested rainbow trout and lake trout in Kenai Lake or Kenai Mountain streams on the Kenai Refuge (Fall et al. 2004:113). These were the only documented uses of fishery resources by the community of Ninilchik in the Kenai River Area in 2002/2003 (**Table 4** [Fall et al. 2004]).

The NTC compared the results of two studies they conducted, one in 1994 of lifetime use areas and a follow-up study in 1999 of uses between 1994 and 1999. NTC's analysis found that during their lifetimes, NTC residents harvested Dolly Varden, lake trout and rainbow trout were harvested in Units 7, 8, 13A, 14A, 15A, 15B, and 15C, but from 1994 to 1999 these species were only harvested in Unit 15C. The use and average pounds harvested dropped significantly (see **Table 3**). There are many reasons why the per household harvest of resident fish may have decreased, including the prohibition of subsistence fishing in 1952, restrictions to the use of traditional, efficient, subsistence fishing gear types, increasing human population, influx of sport fishermen, increasing participation in a cash economy, and commercial

Table 4. Locations Used to Harvest Fish, Ninilchik, 2002/2003

Area Fished	Percentage of Households									
	Chinook	Sockeye	Coho	Chum	Pink	Dolly Varden	Rainbow Trout	Steelhead	Lake Trout	Hooligan
Federal Public Lands and Waters:										
Kenai Lake and Kenai Lake Streams	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	1.00%	0.00%	1.00%	0.00%
Kenai Mountain Streams	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	1.00%	0.00%	0.00%	0.00%
Russian River	0.00%	4.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Other Lands and Waters:										
Anchor River, Stariski Creek	4.00%	0.00%	5.00%	0.00%	1.00%	1.00%	0.00%	0.00%	0.00%	0.00%
Cook Inlet, Anchor Point	4.00%	0.00%	1.00%	0.00%	1.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Cook Inlet, Coho	0.00%	4.00%	1.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Cook Inlet, Deep Creek	12.00%	4.00%	6.00%	0.00%	2.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Cook Inlet, Kenai	3.00%	5.00%	0.00%	0.00%	1.00%	0.00%	0.00%	0.00%	0.00%	1.00%
Cook Inlet, West	1.00%	1.00%	1.00%	0.00%	1.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Gulf of Alaska	0.00%	0.00%	4.00%	0.00%	1.00%	1.00%	0.00%	0.00%	0.00%	0.00%
Kachemak Bay	9.00%	1.00%	7.00%	1.00%	1.00%	1.00%	0.00%	0.00%	0.00%	0.00%
Kasilof River, Crooked Creek	4.00%	8.00%	0.00%	0.00%	0.00%	1.00%	4.00%	0.00%	4.00%	0.00%
Lower Kenai River	4.00%	22.00%	2.00%	0.00%	0.00%	1.00%	0.00%	0.00%	0.00%	3.00%
Ninilchik River, Deep Creek	19.00%	8.00%	20.00%	1.00%	2.00%	8.00%	1.00%	0.00%	1.00%	0.00%
Resurrection Bay	0.00%	0.00%	4.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Other Alaska	1.00%	2.00%	2.00%	0.00%	1.00%	0.00%	0.00%	0.00%	2.00%	0.00%
Missing	7.00%	1.00%	2.00%	0.00%	0.00%	3.00%	2.00%	0.00%	2.00%	1.00%

SOURCE: Fall et al. 2004.

fishing. ADF&G, Division of Subsistence, conducted studies in the 1980s of Ninilchik families, which documented the efforts made by families to procure fish in the absence of stable subsistence fisheries and their difficulties harvesting adequate supplies of fish. The case studies showed shifting harvest techniques from year to year, responding to changing restrictive regulations while at the same time competing with thousands of recreational visitors to the Kenai Peninsula (Georgette 1983).

The 2002/2003 survey also asked respondents to name places that might be a "potential site for Federal subsistence fisheries." Ninilchik households said they would like to see a Federal subsistence fishery in the following locations: 8% (an estimated 46 households) in the Kenai Refuge, 4% (an estimated 24 households) in the Kenai Fjords National Park (which is closed to subsistence fishing), 4% (24 households) in the upper Kenai River, 3% (an estimated 17 households) in Skilak Lake, 2% (an estimated 12 households) in the Chugach National Forest, 2% (12 households) in Kenai Lake, 2% (12 households) in the lower/middle Kenai River, 2% (an estimated 12 households) in the Swanson Lakes, and 1% (an estimated 6 households) each in Johnson Lake and the Russian River (Fall et al. 2004:140).

As noted, NTC conducted research of select NTC members' subsistence uses of fish and wildlife in 1999. NTC conducted face-to-face household surveys in 1999 to collect information on wildlife use patterns of 20 randomly selected Ninilchik tribal member households out of an estimated 61 households[2]. Respondents were asked to draw areas used for subsistence harvests for species such as Chinook salmon, other salmon and nonsalmon fish during the last five years (1995 through 1999). It should be noted that Dr. Robert Wolfe has documented that the methods used by NTC for mapping subsistence uses were consistent with ADF&G subsistence research (Wolfe 2006a, b). NTC's research showed that the Upper Kenai River/Kenai Lakes were used by 28% of Ninilchik residents to harvest nonsalmon fish and that Skilak Lake/Other were used by 16% to harvest nonsalmon fish (Dyrdahl 2005).

Based on information from NTC presented at the Southcentral Council meeting in October 2005, respondents of their survey harvested char and trout from Federal public waters, but specific drainages and levels of use were not provided (SCRAC 2005). Public testimony at the Southcentral Council meeting noted that fishing occurred in Skilak and Tustumena lakes and the Swanson River lake system. Trout was the only fish specifically mentioned in the testimony (SCRAC 2005). BIA staff met with NTC in September 2005, to see if additional information could be elicited from the survey regarding specific locations of fish harvests from Federal public waters on the Kenai Peninsula. Fish harvest locations in Russian, Summit and Hidden lakes, Swanson and Kenai rivers in the Kenai Refuge, and trout fishing through the ice were noted (Chen 2005).

Fall et al.'s reports in 2000 and 2004 and NTC 1999 each surveyed the harvests from one year and as such have limitations in determining a consistent pattern of use. However, there was consistency between the amounts reported harvested in Fall et al.'s 2000 and 2004 studies. Testimony presented at the October 2006 Southcentral Council meeting in Homer noted that the Kenai River was preferred over the Kasilof River prior to the prohibition of subsistence fishing in 1952 because the Kenai River is slower moving than the Kasilof River and therefore easier to pole up (SCRAC 2006). Fall et al.'s research, NTC's research, and public testimony (SCRAC 2005, 2006 and FSB 2006a,b), combined with the lifetime use data from Fall et al. 2006 all indicate some level of use by Ninilchik residents for harvesting fish in the Kenai River Area. The data indicate that the Kenai River Area has been used by Ninilchik residents both in the past and currently.

[2]The estimate of NTC households with NTC members is based on the number of households with an Alaska Native member cited in the U.S. Census in 2000. The census was conducted the year after the NTC research and could be slightly greater or less.

While Ninilchik's harvests are lower in the Kenai River Area than in other areas closer to their community, it has been noted (in a legal opinion stated in a letter to the State of Alaska from the Secretary of the Department of the Interior) that there are no "unimportant" subsistence uses (USDOI 1986: 6–7):

> *Section 803 [of ANILCA] defines 'subsistence uses' to mean 'customary and traditional uses …of wild, renewable resources,' and Section 804 requires that 'nonwasteful subsistence uses' be given a preference over other uses. The plain meaning of these provisions dictates that all 'subsistence uses' as defined in Section 803 qualify for the Section 804 subsistence preference. To the extent that a particular population is relatively unimportant for subsistence purposes, this should be reflected in relatively low customary and traditional use of the population. Yet, however low the customary and traditional use might be (i.e., however 'unimportant' it might be), Section 804 requires that the opportunity to make the use be given an absolute priority over nonsubsistence uses.*

Handling, preparing, preserving, and storing

Traditional fisheries provide the opportunity for the efficient harvest of a sizeable volume of fish as well as small, incidental harvests while traveling that may be cut, dried, and smoked by the family (Wolfe 2006b). In the Kenai Peninsula, large quantities of fish harvested are salmon. Traditional methods of processing and handling fish included drying, smoking, fermenting, and storing in oil. All fish also may be either broiled, baked, broiled, or roasted (Osgood 1937:42). The pattern of harvesting resident fish species also is quite different from the pattern of harvesting salmon. Resident species such as trout are usually harvested in much smaller quantities, partially because resident species of fish often do not preserve as well as salmon. The harvest of resident fish species in the Kenai River Area are more likely to occur when associated with hunting or other harvesting activities, such as berry picking. This pattern of use where multiple activities occur—berry picking, fishing for Dolly Varden and rainbow trout while hunting—is common among subsistence users. Women gathered driftwood from the beach for smoking fish (Russell 1994:13). Ninilchik residents use rotten spruce wood to smoke fish because rotten wood loses the strong flavor found in living trees. Drift cottonwood also is commonly used to smoke fish because cottonwood found on the beach is "clean," without sap, and contains salt, making it a preferred wood for smoking (Russell 1994:14–18). Osgood (1937:42) also noted that cottonwood is used at night because it requires less attention to keep burning. Mountain alder also is used for smoking fish (Russell 1994:14–18) and is sometimes preferred because it has a nice flavor (Osgood 1937:42). Spruce poles with their bark removed are used as racks for drying fish (Russell 1994:14–18). Other uses described are salting, pickling, canning, freezing, and eating the fish fresh (Stanek 1980:11).

Some resident species of fish do not dry or preserve as well as salmon (Williams, 2008, pers. comm.) and are more likely to be eaten shortly after harvesting or frozen. Some Dolly Varden found in lakes have a low fat content and the fat tends to spoil easily, regardless of how the fish is processed (BBNA and ADF&G 1996:47), thus making it more desirable as a fish that is eaten fresh.

Handing down of knowledge of fishing

Subsistence users in Alaska pass information from generation to generation about how to subsistence hunt and fish. Ninilchik is no exception. Testimony at Council and Board meetings provided information regarding how elders teach the young people how to fish. Because of the prohibitions against subsistence fishing established in 1952, traditional practices have been more difficult to pass on from generation to generation. The Alaska Board of Fisheries, in compliance with an Alaska Superior Court order, established educational fisheries in the communities of Kenai in 1989 and in Ninilchik in 1993 (Fall et al. 2004:30). This permit allows Alaska residents accompanied by an NTC member to participate in this

fishery (Brannian and Fox 1996:10). This educational fishery allows participation of some subsistence users in the Chinook and coho salmon harvests (Nelson et al. 1999:160). One purpose of the educational fisheries is to allow the handing down of traditional knowledge, as well as a way for obtaining subsistence fish.

Sharing

In a broad study of subsistence uses in the Kenai Peninsula, Reed (1980:3) notes that subsistence fish are used to satisfy social obligations and gifts of fish are made to family, friends, and neighbors. Data collected by ADF&G (Fall et al. 2000) indicates that 55% received nonsalmon and 49% gave nonsalmon away. Subsistence foods harvested within a household are commonly shared with other households in the extended family, according to local customs and traditions. Alaska Native groups like the NTC expect parents to provide subsistence resources to the young children. In turn, when the children are old enough, they are expected to work with parents harvesting and processing subsistence foods. Children grow up, marry, and continue these relationships with their families. As the parents age, the children then care for them and share the resources they harvest. Subsistence roles and social responsibilities evolve over time. The traditional system of harvesting and then distributing subsistence resources helps support the network of families that make up the larger community. Networks of giving and receiving bind the family members together as well as bind the larger community (Wolfe 2006b:8).

Distribution and sharing of fish and wildlife resources among households occurs often in Ninilchik, though not in large quantities because of the scarcity of resources (especially large mammals). Georgette (1983:186) noted that several households surveyed in her research said they share subsistence resources with friends or neighbors who do not have time or equipment to harvest it themselves. Fish are shared more frequently than large mammals because of the scarcity of large mammals, which are only shared among close relatives. Subsistence resources are shared with others if they are in need.

Reliance upon a wide diversity of fish and wildlife resources

Ninilchik residents rely on a wide diversity of fish and wildlife resources. The average number of wild resources used by Ninilchik households was 8.6 in 1998. This is greater than in Kenai (6.1 in 1991 and 7.1 in 1993) and Cooper Landing (8.3). These uses are reflective of a heterogeneous community that is comprised of long-term residents and newcomers and a community that does not harvest marine mammals. In 1998, Ninilchik residents harvested 164 pounds per person of subsistence wild resources for home use (Fall et al. 2000:242–245).

Effect of the Proposal

A positive customary and traditional use determination for the residents of Ninilchik for all fish in the Federal public waters of the Kenai River Area would provide them with a subsistence priority for harvesting resident fish species. Ninilchik residents already have a positive customary and traditional use determination for salmon in the Kenai River Area. A positive customary and traditional use determination for all fish in the Kenai River Area would allow Ninilchik residents to harvest resident species under Federal subsistence regulations as well as retain resident species when harvested incidentally while salmon fishing. This would provide Ninilchik with the same customary and traditional use determination—all fish—as the communities of Hope and Cooper Landing.

Effects on nonsubsistence users and conservation concerns are addressed through the implementation of seasons, harvest limits, and methods and means of the harvest and are not part of the consideration in making customary and traditional use determinations. However, effects on nonsubsistence users are not

expected to be significant because recent studies (Fall et al. 2000 and 2004 and NTC 1999) have indicated low levels of resident fish species harvests and use in the Kenai River Area by Ninilchik residents.

The Southcentral Council's recommended modification to the proposed regulation for a customary and traditional use determination for resident species of fish for the community of Ninilchik would exclude burbot, Arctic grayling, and pike. The recommendation is not anticipated to have any effect on the community of Ninilchik's use of resident species in the Kenai River Area. There is no open Federal season for burbot and Arctic grayling, and no Federal regulations for pike. There are no limits for harvesting pike under State regulations. Adopting the Southcentral Council recommendation would result in a regulation broken out by species for Ninilchik and for all fish for Hope and Cooper Landing, although the net effect would be the same for all communities.

OSM CONCLUSION

Support Proposal FP09-07.

Justification

Until 1952, freshwater streams in the Kenai Peninsula were open to subsistence fishing. In 1952, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel or hook or line were allowed for "personal use." From 1952 until 2002 and from 2006 until the present, Ninilchik residents were not allowed to subsistence fish for resident fish species in the Kenai River Area. Because such a prohibition constitutes an interruption beyond the control of Ninilchik residents, the Board necessarily makes its decision on the best available information concerning historical patterns of use prior to the imposition of the prohibition or contemporary patterns of use under existing regulations. Residents of Ninilchik have consistently harvested all fish on the Kenai Peninsula since the community was settled in the mid-1800s. Information regarding Ninilchik's harvests of resident fish species in the Kenai River Area was provided by Fall et al. (2000, 2004, and 2006), NTC (1994 and 1999), Chen (2005, pers. comm.), Wolfe (2006a and b) and during public testimony at Southcentral Council (SCRAC 2005, 2006, and 2007) and Board (FSB 2006a and b, and 2007a, b and c) meetings.

Information provided by Fall et al. (2006) and NTC (1994 and Wolfe 2006a and 2006b) documented the lifetime uses of fish species by Ninilchik residents of the Kenai River Area. Fall et al. (2006) found that 28% of Ninilchik households had fished for either salmon or resident fish species in the Federal public waters of the Kenai River or the Swanson River areas in their lifetime (17% frequently, 4% intermittently, and less than 6% infrequently). Kenai River use has decreased in recent years due to changes in regulations, competition with other users, and population changes. Fall et al. (2000 and 2004) documented Ninilchik residents' subsistence harvest and use of resident fish in the Kenai River Area. Fall et al. (2004) reported that less than 1% of households harvested rainbow trout and lake trout in Kenai Lake or Kenai Mountain streams on the Kenai Refuge. Fall et al.'s research in 1998 and 2002-03, indicates that while harvests were low, there was a consistent pattern of use by Ninilchik residents in the Kenai River Area for harvesting resident fish. Additionally, while Ninilchik's uses of the Kenai River Area were not substantial during the study years, there are no "unimportant" subsistence uses in ANILCA (USDOI 1986: 6–7).

The opportunistic nature and associated values of subsistence hunting and fishing is that it does not limit harvest to a specific species—specifically, if a Ninilchik resident were fishing in the Kenai River Area for salmon (for which they have a positive customary and traditional use determination), and a rainbow trout is harvested instead, it is the nature of the subsistence user to use what is harvested. This is the pattern throughout Alaska of subsistence hunting and fishing.

The pattern of harvesting resident fish species also is distinct from the pattern of harvesting salmon. Resident species such as trout are usually harvested in smaller quantities, partially because resident species of fish often do not preserve as well as salmon. The harvest of resident fish species in the Kenai River Area is likely to occur when associated with hunting or other harvesting activities, such as berry picking. This pattern of use where multiple activities occur—berry picking, fishing for Dolly Varden and rainbow trout while hunting—is common among subsistence users.

Based on the available history of the pattern of Ninilchik's use of resident fish species in the Kenai River Area, the opportunistic nature of subsistence uses, and the demonstrated history of fishing activities by Ninilchik residents, it is reasonable to conclude that Ninilchik residents have customarily and traditionally used resident fish species in the Kenai River Area. Thus, there is a reasonable basis for a positive customary and traditional use determination for the community of Ninilchik in the Kenai River Area for all fish, with no distinction between salmon and resident fish species.

The Southcentral Council's recommended modification to the proposed regulation for a customary and traditional use determination for resident species of fish for the community of Ninilchik would exclude burbot, Arctic grayling, and pike. The recommendation is not anticipated to have any effect on the community of Ninilchik's use of resident species in the Kenai River Area. There is no open Federal season for burbot and Arctic grayling, and no Federal regulations for pike. There are no limits for harvesting pike under State regulations. Adopting the Southcentral Council recommendation would result in a regulation broken out by species for Ninilchik and for all fish for Hope and Cooper Landing, although the net effect would be the same for all communities.

Finally, conservation concerns are not part of the decision process for making customary and traditional use determinations. Such concerns are properly addressed through the implementation of seasons, harvest limits, and methods and means of the harvest.

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INTERAGENCY STAFF COMMITTEE COMMENTS

FP09-07

The Interagency Staff Committee (ISC) found the staff analysis for Proposal FP09-07 to be a thorough and accurate evaluation of the proposal.

The majority of the ISC noted that a holistic application of the eight factors demonstrates that residents of Ninilchik have a customary and traditional pattern of use of resident fish in the Federal public waters of the Kenai Peninsula District, while a minority of the ISC noted that there is not a pattern of use by the community of Ninilchik for resident fish species in these same waters. The majority also believe that there is insufficient information to distinguish between individual species and that use of a species cutoff-date prior to 1952 could be detrimental to Federally qualified subsistence users. In reaching its conclusion, the minority believes a customary and traditional use determination for residents of Ninilchik for any resident fish species in this area is not supported by substantial evidence.

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-07 Ninilchik Customary and Traditional Use Determination for Resident Species in the Kenai River Area

Introduction: Proposal FP09-07 requests that recent customary and traditional use (C&T) findings by the Federal Subsistence Board (Federal Board) for the communities of Ninilchik and Happy Valley be changed to allow those residents to harvest resident fish stocks under federal subsistence regulations from federal lands within and north of the Kenai River drainage ("Kenai River area"). Proposal FP09-07 is identical in intent to the portion of Proposal FP06-09 which the Federal Board rejected on September 13, 2007, based on insufficient evidence to support a determination of customary and traditional use of resident species within the Kenai River area by residents of Ninilchik and Happy Valley after a lengthy public process and intense examination lasting over a year. The federal staff analysis of this proposal mirrors its analysis of that portion of the previous proposal that the Federal Board rejected. The proposal and federal staff provide no new or substantial evidence of Ninilchik or Happy Valley customary and traditional taking of discrete resident fish stocks of the upper Kenai River area within federal public lands.

Background: Application of the September 23, 2008, Ninth Circuit Court opinion in *State of Alaska v. Federal Subsistence Board,* 544 F.3d 1089, reinforces the correctness of the Federal Board's prior C&T determination regarding nonuse of the resident fish stocks within federal lands in the Kenai River area by Ninilchik and Happy Valley residents. The Court held that Federal Board C&T determinations must be supported by substantial evidence of a specific rural community or area's demonstrated customary and traditional taking of a specific fish stock or wildlife population, not general species, within specific geographic locations. *Alaska v. Federal Subsistence Board* at 1094-99. The Federal Board's determination must have a "substantial basis in fact." *Id*. at 1094. The Court held: "Under 50 C.F.R. §100.16, C & T determinations should 'identify the specific community's or area's use of specific fish stocks and wildlife populations,' . . . and not Chistochina's use of moose in general." *Id*. at 1096. The Court added that the Federal Board's "regulations clearly tie C & T determinations to the specific locations in which wildlife populations have been taken" and "each C & T ***determination*** must be tied to a specific community or area and a specific wildlife population." *Id.* at 1097 (emphasis in original). The Court further emphasized: "Specific communities and areas and specific fish stocks and wildlife populations are, by definition, limited to specific geographic areas" and "a C & T determination is a determination that a community or area has taken a species for subsistence use ***within a specific area***." *Id*. at 1097-98 (emphasis in original).

As previously determined by the Federal Board, resident species fish stocks found within federal boundaries in the Kenai River area constitute distinct stocks, and residents of Ninilchik and Happy Valley have not "customarily and traditionally" taken significant numbers of those distinct stocks from that area. Any evidence of those communities' take of the same general species of fish in other waters closer to Ninilchik and Happy Valley cannot be used to grant Ninilchik or Happy Valley C&T determinations to the specific fish stocks in the upper Kenai River area at issue. Ninilchik and Happy Valley are located far away from the upper Kenai River area. They have not historically relied on those discrete resident fish stocks for their

subsistence needs. Given the Federal Board's prior analysis and recent pronouncements by the Ninth Circuit Court in *Alaska v. Federal Subsistence Board*, a C&T determination for the communities of Ninilchik and Happy Valley to take the specific resident fish stocks of the upper Kenai River area cannot be supported. No new information has been provided that would support reversing the Federal Board's recent determination that insufficient evidence exists to support a determination of customary and traditional use of the specific resident fish stocks within the Kenai River area by residents of Ninilchik and Happy Valley.

Opportunity Provided by State: The Kenai River area is located in the Anchorage-MatSu-Kenai Nonsubsistence area designation under State law. The State provides a broad array of personal use, recreational, and educational fisheries to meet needs for personal and family consumption as well as cultural purposes. In addition to personal use and educational fisheries for salmon, State sport fishing regulations provide adequate opportunities for harvest of rainbow/steelhead trout, lake trout, and Arctic char/Dolly Varden in addition to salmon.

Conservation Issues: No separate harvest proposal was submitted by the proponent, but, if this proposal is adopted, presumably Ninilchik and Happy Valley residents would become eligible to harvest resident species under existing federal subsistence harvest regulations which apply to residents of Hope and Cooper Landing for taking resident species in the Kenai River area. The State previously documented that resident species are easily over-harvested, and a conservative management approach has been developed by the State over time to assure harvest opportunity while sustaining these distinct, vulnerable resident stocks in the Kenai River area. Most trout fishermen in that area practice catch-and-release fishing, and the proportion of rainbow trout that are harvested in the State fishery is only about 2.4 percent. Current federal regulations providing for use of dip nets and multiple baited treble hooks and for high daily harvest and possession limits for these Kenai River area resident stocks already raise serious conservation issues that are amplified by inadequate reporting requirements. Adding a new subsistence harvest of these resident fish by Ninilchik and Happy Valley to existing federal subsistence harvests of these fish by Hope and Cooper Landing residents would significantly increase these concerns.

Department Recommendation: Oppose.[1] No new information is presented in the proposal or in the federal staff analysis which justifies reversing the 2007 Federal Board C&T determination. Granting a customary and traditional finding without substantial evidence of a prior pattern of take of specific fish stocks in a specific geographic area by a specific community would be in direct conflict with the September 23, 2008, opinion in *Alaska v. Federal Subsistence Board*. The recent federal staff analysis contains the same information, taken from the same surveys and data compilations reported in 2003-2006, that the federal staff reported before. No substantial evidence that use of the specific resident stocks in the Kenai River area by Ninilchik and Happy Valley residents satisfies the Federal Board's regulatory definition of customary and traditional use, *see* 50 C.F.R. 100.4, or the Board's regulatory factors for making a positive C&T determination for any specific resident fish stock. *See* 50 C.F.R. 100.16(b). The Federal Board previously carefully considered the relevant information and properly concluded those communities had rarely harvested or fished from those specific fish stocks in those Kenai waters.

[1] ADF&G incorporates its previous detailed submittals on this subject to the Federal Board, including those dated April 30 and May 7, 2007, and its prior RFRs in opposition to that portion of FP06-09 which the Board eventually denied.

WRITTEN PUBLIC COMMENTS

Oppose. Based on the prior analysis of the historic pattern of use and the eight criteria that are required under ANILCA and the decision to not grant C and T for freshwater water species to residents of Ninilchik, Kenai River Sportfishing Association strongly opposes this expansion of subsistence opportunity. As is the case in this situation, we cannot simply afford additional opportunity to a community that cannot demonstrate a pattern of use of those resources present within the Federally managed waters. Adoption of this proposal will detrimentally impact other users and other uses of these resources.

Subsistence opportunities for residents of Ninilchik exist under State regulations. This proposal revisits decisions already made by the Federal Board in November, 2006, and would grant residents of Ninilchik a Federal subsistence priority for freshwater species occurring in the Kenai River within the Kenai National Wildlife Refuge and the Chugach National Forest. Central to those earlier decisions was the fact that C&T could not be demonstrated for freshwater species within the Federally managed waters.

The justification provided for this proposal recognizes this activity did not occur on the allowable Federal property but asks it be allowed anyway because the Federal boundaries are not consistent with their historic patterns (areas) of use.

Kenai River Sportfishing Association

FP09-09 Executive Summary	
General Description	Proposal FP09-09 requests the following changes to Federal subsistence regulations for the Cook Inlet Area: 1) better definition of when and where fish need to be marked and information entered on permits, 2) clarification of the lower boundary for the Kasilof River fishing area, and 3) alignment of permit due dates so only one permit could be used for both salmon and resident species. *Submitted by the U.S. Fish and Wildlife Service*
Proposed Regulation	See analysis for the proposed regulatory language.
Southcentral Regional Council Recommendation	**Support**
Interagency Staff Committee Comments	See comments following the analysis.
ADF&G Comments	**Support with modification.** See comments following the analysis.
Written Public Comments	**1 Support**

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-09

SOUTHCENTRAL REGIONAL ADVISORY COUNCIL

Support Proposal FP09-09. The proposal will clarify the current regulations by including more specific language on recording and marking of the boundary of the lower Kasilof fishing area. It would also simplify permit requirements by allowing a single permit. The changes will benefit subsistence users and will not affect fish populations or other uses.

STAFF ANALYSIS
FP09-09

ISSUES

Proposal FP09-09, submitted by the U.S. Fish and Wildlife Service, requests the following changes to Federal subsistence regulations for the Cook Inlet Area: 1) better definition of when and where fish need to be marked and information entered on permits, 2) clarification of the lower boundary for the Kasilof River fishing area, and 3) alignment of permit due dates so only one permit could be used for both salmon and resident species.

DISCUSSION

The proponent states that current regulatory language for the Cook Inlet Area is unclear concerning when and where harvested fishes must be recorded and marked, and the location of the lower boundary of the Kasilof River fishing area. Additionally, current regulations that require Federally qualified subsistence users to return fishing permits by the end of the fishing season also require these users to obtain separate permits for the salmon dip net and the salmon or resident species rod and reel fisheries. The proponent states that including return dates on the permits would allow Federally qualified subsistence users to participate in all fisheries within the same drainage using a single permit.

Existing Federal Regulation

§___.27(i)(10) Cook Inlet Area

(ii) You may take fish by gear listed in this part unless restricted in this section or under the terms of subsistence fishing permit (as may be modified by this section).

(iv)(A) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to a marker on the river at Silver Salmon Rapids. Residents using rod and reel gear may fish with up to 2 baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout taken through August 15. After 200 rainbow/steelhead trout have been taken in this fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location.

(C)(4)(iii) All harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location. Reported information must include number of each species caught; number of each species retained; length, depth (number of meshes deep) and mesh size of gillnet fished; location fished; and total hours fished. Harvest data on the permit must be filled out before transporting fish from the fishing area.

(vi) Incidentally caught fish may be retained and must be recorded on the permit.

(D) Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and sockeye, late-run Chinook, coho, and pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak Lake, incidentally caught fish may be retained for subsistence uses, except for early-run Chinook salmon (unless otherwise provided for), rainbow trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early- and late-run Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager at the end of the season. Chum salmon that are retained are to be included within the annual limit for sockeye salmon. Only residents of Hope and Cooper Landing may retain incidentally caught resident species.

(E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under paragraph (i)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager at the end of the fishing season. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (i)(10) (iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.54), except for the following bag and possession limits:

Proposed Federal Regulation

§___.27(i)(10) Cook Inlet Area.

(ii) You may take fish by gear listed in this part unless restricted in this section or under the terms of subsistence fishing permit (as may be modified by this section). ***For all fish that must be marked and recorded on a permit in this section, they must be marked and recorded prior to leaving the fishing site. The fishing site includes the particular Federal public waters and/or adjacent shoreline from which the fish were harvested.***

(iv)(A) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to a marker on the river ***approximately 2.8 miles below the Tustumena Lake boat ramp*** ~~*at Silver Salmon Rapids*~~*. Residents using rod and reel gear may fish with up to 2 baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout taken through August 15. After 200 rainbow/steelhead trout have been taken in this fishery or after August 15, all rainbow/*

steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location.

(C)(4)(iii) All harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location. Reported information must include number of each species caught; number of each species retained; length, depth (number of meshes deep) and mesh size of gillnet fished; location fished; and total hours fished. Harvest data on the permit must be filled out before transporting fish from the fishing ***site*** ~~*area*~~*.*

(vi) Incidentally caught fish may be retained and must be recorded on the permit ***before transporting fish from the fishing site****.*

(D) Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and sockeye, late-run Chinook, coho, and pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak Lake, incidentally caught fish may be retained for subsistence uses, except for early-run Chinook salmon (unless otherwise provided for), rainbow trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early- and late-run Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager ***by the due date listed on the permit*** ~~*at the end of the season*~~*. Chum salmon that are retained are to be included within the annual limit for sockeye salmon. Only residents of Hope and Cooper Landing may retain incidentally caught resident species.*

(E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under paragraph (i)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager ***by the due date listed on the permit*** ~~*at the end of the fishing season*~~*. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (i)(10) (iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.54), except for the following bag and possession limits:*

Extent of Federal Public Waters

For purposes of this discussion, the phrase "Federal public waters" is defined as those waters described under 50 CFR 100.3. For the Kenai River drainage, Federal public waters under consideration for this proposal analysis include waters within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge and Chugach National Forest (**Map 1**). This includes Kenai Lake and its tributaries and all waters downstream to the confluence of the upper branch of the Killey River, approximately 2 river miles of the mainstem Kenai River at approximately river mile 25 (known locally as Moose Range Meadows), and most of the upper reaches of tributaries below Skilak Lake including the Moose, Killey and Funny rivers.

For the Kasilof River drainage, Federal public waters under consideration for this proposal include waters within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge (**Map 2**). This includes Tustumena Lake and its tributaries and the upper seven river miles of the Kasilof River down to Silver Salmon rapids (about 2.8 river miles downstream of the Tustumena Lake boat ramp).

Customary and Traditional Use Determinations

In the Kenai Peninsula District for waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest, residents of Cooper Landing and Hope have a positive customary and traditional use determination for all fish and residents of Ninilchik have a positive customary and traditional use determination for salmon. In the Kasilof River drainage, residents of the community of Ninilchik have positive customary and traditional use determinations for all fish.

Regulatory History

Pre- and Early Statehood Fisheries

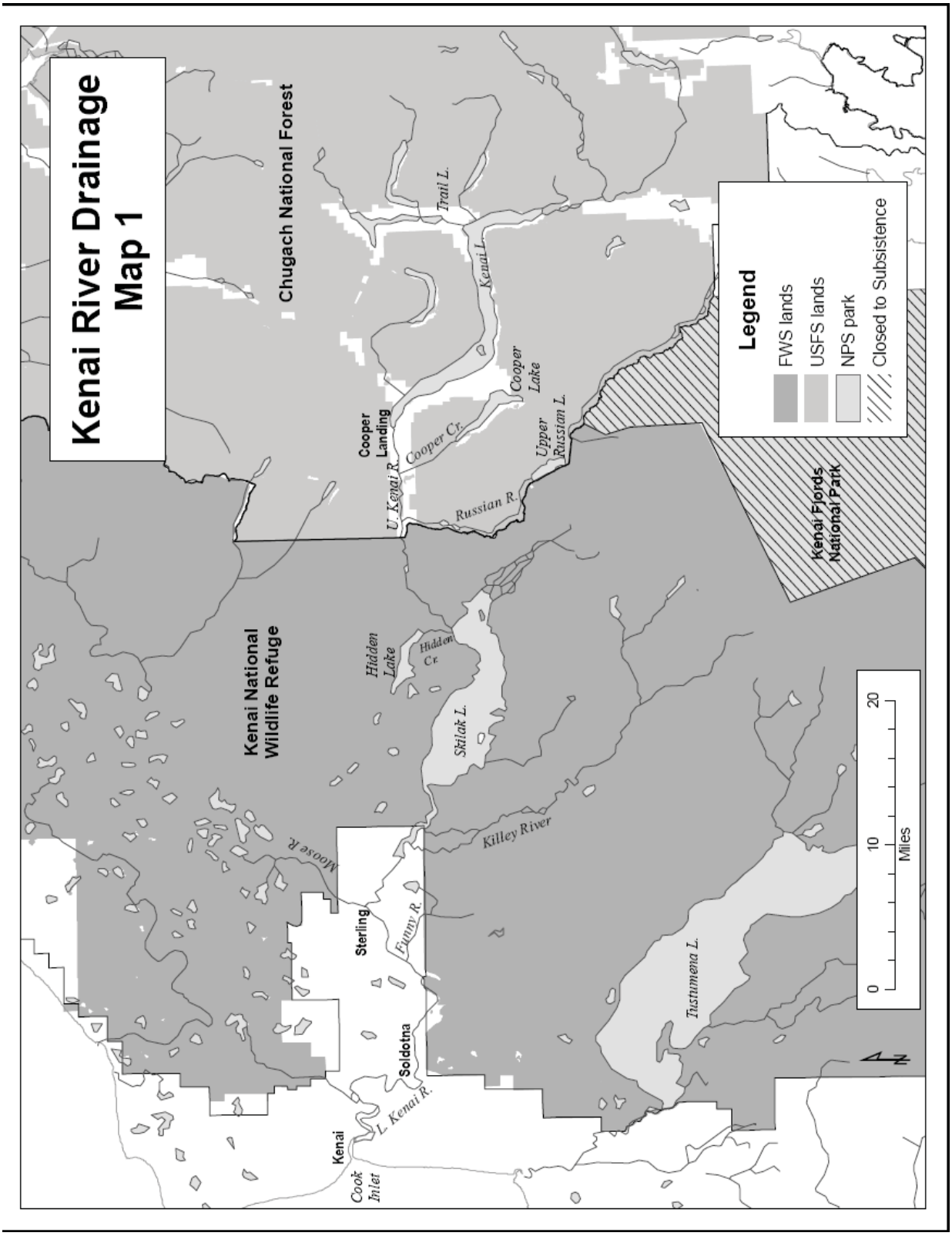
Until 1952 freshwater streams in the Kenai Peninsula were open to subsistence fishing, but poorly regulated commercial fisheries decimated salmon runs. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel was allowed for "personal use" (Fall et al. 2004).

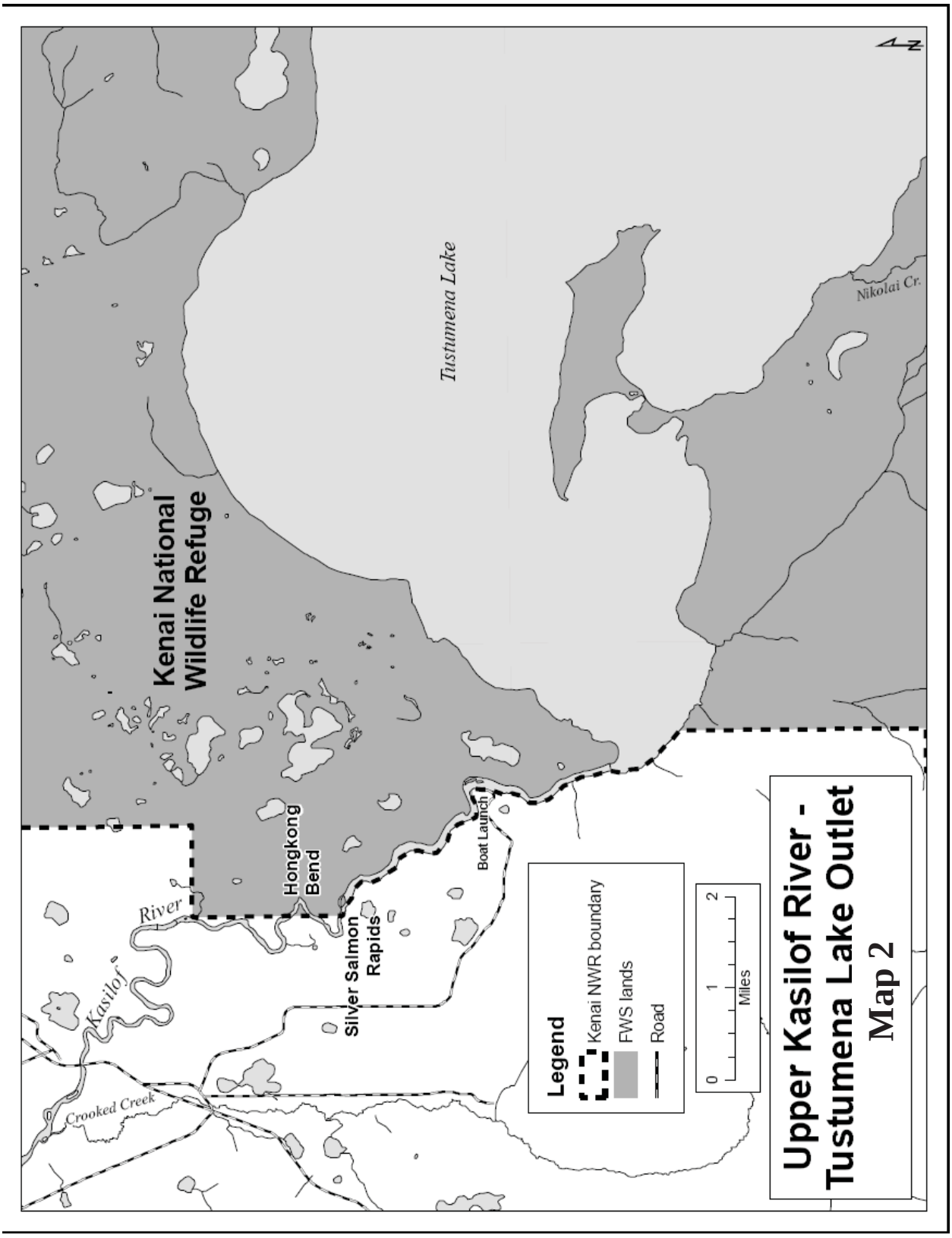
After 1952, subsistence salmon users in the Cook Inlet Area harvested fish under personal use and sport fish regulations alongside allocation priorities directed toward recreational fisheries for Chinook, sockeye, and coho salmon runs and commercial fisheries for sockeye, chum and pink salmon runs (Braund 1980:15–18).

State Fisheries

In 1992, the State classified most of the Cook Inlet Area, including the Kenai and Kasilof River drainages, as a non-subsistence area (5AAC 99.015(3)). The only State subsistence fisheries in Cook Inlet occur in areas that are not accessible from the road system, including the Tyonek, Windy Bay, Port Chatham, Kyuktolik, and Port Graham subdistricts, as well as portions of Seldovia Bay and the Yentna River drainage.

The State has a regulatory management plan for Upper Cook Inlet salmon (5 AAC 21.363) that provides the Alaska Board of Fisheries with guiding principles and mandatory criteria to use when adopting management plans for specific stocks. Commercial and sport fisheries are complex and intensively managed, and there are five management plans specific to Kenai River salmon stocks (5 AAC 21.359, 5


Kenai River Drainage
Map 1
Chugach National Forest
Trail L.
Kenai L.
Cooper Lake
Upper Russian L.
Cooper Landing
Cooper Cr.
U. Kenai R.
Russian R.
Kenai Fjords National Park
Legend
FWS lands
USFS lands
NPS park
Closed to Subsistence
Kenai National Wildlife Refuge
Hidden Lake
Hidden Cr.
Skilak L.
Killey River
Moose R.
Sterling
Funny R.
Soldotna
L. Kenai R.
Kenai
Cook Inlet
Tustumena L.
0
10
20
Miles


Kenai National Wildlife Refuge
Tustumena Lake
Nikolai Cr.
Hongkong Bend
Boat Launch
Silver Salmon Rapids
Kasilof River
Crooked Creek
Legend
Kenai NWR boundary
FWS lands
Road
0
1
2
Miles
Upper Kasilof River - Tustumena Lake Outlet
Map 2

AAC 21.360, 5 AAC 21.363, 5 AAC 21.365, and 5 AAC 56.070). These management plans provide goals for sustained yield, guidance for mixed-species and mixed-stock fisheries, and instructions for allocation between competing fisheries.

The State has a regulatory management plan for Upper Cook Inlet personal use salmon fisheries (5 AAC 77.540). This plan established four personal use fisheries in Upper Cook Inlet: Kasilof River dip net, Kasilof River set gillnet, Kenai River dip net, and Fish Creek dip net. Unlike subsistence fisheries, personal use fisheries do not have a priority over other existing uses. Personal use fisheries are open to all residents of Alaska, require a sport fishing permit and household permit, and occur in marine and intertidal waters outside of Federal public lands. These fisheries target sockeye salmon, the species of greatest abundance and for which the best stock assessment information is available. The current annual harvest limit is 25 salmon and 10 flounder for the head of each household and 10 salmon for each additional household member. Incidentally caught coho, pink, and chum salmon may be retained as part of the annual limit. No retention of Chinook salmon is allowed in the Kasilof River dip net fishery, while Chinook salmon may be retained in the Kasilof River set gillnet fishery as part of the annual limit. The annual household limit is the combined harvest from all personal use fisheries, and cannot include more than one Chinook salmon.

The State administers educational fisheries for 5 groups in the Central (Kenaitze Tribal Group, Ninilchik Traditional Council, Ninilchik Native Descendents, Ninilchik Emergency Services, and Anchorage Point VFW) and 6 groups in the Northern (Knik Tribal Council, Big Lake Cultural Outreach, Intertribal Native Leadership, Eklutna Village, Tyonek Village, and Tim O'Brien) Districts of Upper Cook Inlet under the provisions of 5 AAC 93.200 - 93.235 (Shields 2007). Educational fisheries are based upon applications that address standards set out in regulation. Specific provisions for these fisheries have varied, but permits have allowed operation of either one or two set gillnets in marine waters in addition to use of traditional methods in freshwaters, including stick fence weirs, grass baskets, and dip nets made from tree roots using materials that naturally occur in the area. For the Kenai River, only the Kenaitze Tribal Group has been issued an educational permit. The permit currently allows this group to harvest 8,000 salmon annually, including up to 300 Chinook and 1,000 coho salmon. In 2007, the Kenaitze Tribal Group total harvest was 4,628 salmon, consisting of 25 Chinook, 3,941 sockeye, 543 pink, and 119 coho salmon

The State also administers sport fisheries in which both salmon and resident species can be harvested. The sport fisheries for salmon and resident species in the middle and upper Kenai River drainage, within the boundaries of Kenai National Wildlife Refuge and Chugach National Forest, comprise the largest sport fisheries in the state (Pappas and Marsh 2005). There are no participation limits for non-guided anglers, but the number of guides that take anglers fishing in Federal public waters of the Upper Kenai River (Russian River to Skilak Lake) is limited by the Kenai National Wildlife Refuge through a system of special and incidental use permits.

Federal Subsistence Fisheries

Federal regulations for subsistence fisheries were first established in 1999. For salmon, trout, Dolly Varden, and char in Cook Inlet there was no customary and traditional use determination; therefore, all rural residents of Alaska qualified under the Federal program as eligible subsistence users. In 2002, regulations for take in Cook Inlet were established for salmon, trout, Dolly Varden, and char. This subsistence fishery required a permit, and seasons, harvest and possession limits, and methods and means for take were identical to State of Alaska sport fishing regulations. The Federal Subsistence Board (Board) established this fishery as an interim measure to provide some subsistence opportunity in Cook Inlet for rural residents, pending collection of additional information on community and area-specific

harvest patterns to refine customary and traditional use determinations as well as regulations for take. The Board concluded that this information was necessary because of the unique circumstances of the Kenai Peninsula. Rural communities are interspersed among much larger non-rural communities, and no subsistence fishing has been allowed in the freshwaters of the Kenai Peninsula for over 50 years.

The Board did not consider any further regulatory proposals for Cook Inlet until 2005. With new information available (Fall et al. 2004), the Board took up consideration of customary and traditional use determinations, and continued to defer proposals for take until completion of those deliberations. During this time, no proposals for harvest were under consideration, and regulations for subsistence harvest were identical to State of Alaska sport fishing regulations with one exception. In November 2006, the Board adopted FSA06-01b which provided a temporary 2006-2007 winter subsistence fishery for resident species in Tustumena Lake. The Board considered fishery regulatory proposals for Cook Inlet in both 2007 and 2008, and adopted several proposals establishing subsistence fisheries for salmon and resident fish species in the Kenai and Kasilof River drainages. These include dip net salmon fisheries at designated sites in the Kenai, Russian, and Kasilof Rivers; rod and reel salmon and resident species fisheries in the Kenai and Kasilof River drainages; an under-the-ice gillnet and jig resident species fishery in Tustumena Lake, and a temporary fish wheel salmon fishery in the Kasilof River.

Biological Background and Harvest History

Salmon populations in the Kenai and Kasilof River drainages are healthy, and harvests, while large, have been within sustainable limits. Resident species populations in both drainages are also healthy, and harvests have also been kept within sustainable limits. The proponent is not requesting changes to household, daily, possession, or annual total harvest limits for any salmon or resident fish species.

Effects of the Proposal

The regulatory language changes requested by the proponent would clarify existing regulations concerning when and where harvested fishes must be recorded and marked, and where the lower boundary of the Kasilof River fishing area is located. Existing regulations may be misinterpreted by both enforcement officers and Federally qualified subsistence users. Additionally, current regulations require Federally qualified subsistence users to return fishing permits by the end of the fishing season, which makes it necessary for users to obtain separate permits for the salmon dip net fishery and the salmon or resident species rod and reel fishery. Requiring the return date to be printed on the permit would reduce the amount of paperwork for subsistence users and management agencies, since only one permit would be needed for the dip net fishery and both rod and reel fisheries in each drainage. These proposed regulatory changes would not affect fish populations or other uses.

OSM CONCLUSION

Support Proposal FP09-09.

Justification

The proposed regulatory language changes would clarify Federal subsistence harvest regulations by including more specific language describing when and where harvested fishes need to be recorded and marked, and where the lower boundary of the Kasilof River fishing area is located. It would also simplify permit requirements by allowing a single permit to be used for the dip net and the rod and reel fisheries for each drainage. Improved clarity and simplification of paperwork would benefit Federally qualified subsistence users, and would not affect fish populations or other uses.

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Pappas, G. E. and L. E. Marsh. 2005. 2004 Recreational fisheries overview and historic performance information for the North Kenai Peninsula: fisheries under consideration by the Alaska Board of Fisheries, January 2005. ADF&G, Fishery Management Report No. 04-17, Anchorage, AK.

USFWS. 2008. Draft Revised Comprehensive Conservation Plan and Environmental Impact Statement for the Kenai National Wildlife Refuge, May 2008. USFWS, Anchorage, AK.

INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-09

The Interagency Staff Committee (ISC) found the staff analysis for Proposal FP09-09 to be a thorough and accurate evaluation of the proposal and provides sufficient factual basis for the Regional Council recommendation and Federal Subsistence Board action on the proposal.

The ISC noted that the proposal as supported by the Regional Council recommendation would provide clarification in the Cook Inlet Area Federal subsistence fishing regulations and more flexibility to the Federal in-season manager.

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-09 Clarify Kenai Peninsula Fishery Regulations

Introduction: Proposal FP09-09 is intended to streamline the federal subsistence fishery permitting process, to improve enforceability of permit reporting requirements, and to further define fishery regulatory boundary limits of the fisheries. The Alaska Department of Fish and Game (Department) supports the intent of the proposal but proposes modifications to better achieve this intent without creating new unintended ambiguities and conflicts.

Additionally, current federal subsistence fisheries regulations do not allow for the reporting resolution necessary to accountably manage multiple fisheries which may take place concurrently at the same location targeting the same species, with the same or different gear types, seasons, reporting requirements, and varying individual household, seasonal, community, and fishery quota limits. Improvement in reporting resolution will assist with management of individual fisheries by year or season, will help with tracking of harvest allocations among fisheries, communities, and gear types, and will assist with fisheries management decisions when necessary. Current federal subsistence regulations do not provide inseason managers with the tools necessary to make informed decisions.

The Department's recommended modifications are offered to assist with improving the manageability of the multiple federal subsistence fisheries on the Kenai Peninsula.

Impact on Subsistence Users: Adoption of this proposal should not result in significant impacts on federal subsistence users. It chiefly provides for streamlined processes, eliminating the need for separate seasonal permits, while also providing clarification of regulatory requirements to aid enforcement and prevent unnecessary enforcement actions. The intent of proposal FP09-09 is to increase permitting efficiency and clarify regulations. The proposed changes, if accompanied by the modifications suggested below to avoid unintended conflicts and ambiguities in the proposal, will make it easier for federal subsistence users to obtain necessary permits, better understand the federal regulations, and avoid violating the law or being charged with a violation.

In particular, the provisions clarifying the requirement that harvests must be recorded on site should help prevent federal subsistence users from being cited while in possession of unmarked and/or unrecorded fish in areas outside of claimed federal jurisdiction or away from the fishery. With slight modification, the proposed physical definition of the federal subsistence fishery on the Kasilof River is a clearer specification of the claimed boundary, which should help federal subsistence users identify the physical limits of the fishery and avoid citations for illegal fishing in waters closed to federal subsistence fishing.

Opportunity Provided by State: Kenai and Kasilof rivers are located in the Anchorage-MatSu-Kenai Nonsubsistence area designation under state law. The State provides a broad array of opportunities to participate in personal use, sport, and educational fisheries in these rivers and nearby areas to meet needs for personal and family consumption as well as cultural purposes.

Conservation Issues: No stocks of salmon or resident species from the Kenai or Kasilof rivers have been designated as a stock of concern by the Alaska Board of Fisheries. However, extensive Department comments previously submitted during 2006-2008 to the Federal Subsistence Board and Southcentral Regional Advisory Council described conservation issues that could develop for the Kenai and Kasilof rivers with implementation of the federal subsistence fisheries.

Jurisdiction Issues: The Department requests detailed land status maps that distinctly illustrate land ownership, easements, and exact boundaries within which it is claimed that federal regulations would apply and justification for claiming those boundaries. Portions of both the upper and lower Kenai and Kasilof rivers are bordered by state, private lands, and claimed areas of federal jurisdiction. While standing on state and private lands (including state-owned submerged lands), persons must comply with state law and cannot harvest under conflicting federal regulations. Fishers need to be provided copies of these detailed maps and advised that the State of Alaska will enforce its regulations on fishers standing on nonfederal land.

Recommendation: Support the proposal with modification (shown as underlined), as follows:

(1) The following requested modification under .27(i)(10)(ii) Cook Inlet Area is intended to help ensure that fish harvests are properly allocated to a specific gear type and location of a subsistence fishery. These changes are needed because different limitations and requirements apply to different gear types, areas, and fisheries and, as stated above, there are often several fisheries occurring at the same time. The modification qualifies language regarding the fishing site to avoid misleading fishers into incorrectly believing that all shorelines adjacent to claimed federal public waters can be fished from under federal regulations. For example, fishing from state and private shorelines located outside of the Kenai Refuge boundaries alongside the upper Kasilof River is subject to state regulation.

§___.27(i)(10) Cook Inlet Area.

(ii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section). ***For all fish that must be marked and recorded on a permit in this section, they must be marked and recorded by species, harvest site, fishery, and harvest method (such as "dipnet" or "rod and reel"), prior to leaving the fishing site or switching to a different method of harvest or fishery. The fishing site includes the particular Federal public waters, and/or adjacent shoreline where allowed, from which the fish were harvested.***

The following additional modification is requested to assist users in locating the regulatory marker located "approximately 2.8 miles" below the boat ramp.

§___.27(i)(10) Cook Inlet Area.

(iv)(A) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream

to a marker on the river ***approximately 2.8 miles below the Tustumena Lake boat ramp in the vicinity of Silver Salmon Rapids*** ~~*at Silver Salmon Rapids*~~*. Residents using rod and reel gear may fish with up to 2 baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout taken through August 15. After 200 rainbow/steelhead trout have been taken in this fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location.*

(2) The following modification is intended to ensure that the due date listed on the permit is for the same year as the fishing season, while retaining the administrative benefits of one permit.

§___.27(i)(10) Cook Inlet Area.

(E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under paragraph (i)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager ***that year*** ***by the due date listed on the permit*** ~~*at the end of the fishing season*~~*. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (i)(10)(iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.54), except for the following bag and possession limits:*

NOTE: The Department's comments and support for clarifying federal regulations and better defining the permitting and harvest recording requirements and fishery area boundaries represented by this proposal do not indicate Departmental support for the content of the regulations as a whole. The past and present record, including requests for reconsideration still pending, documents the State's objections to and concerns with many of the regulations.

WRITTEN PUBLIC COMMENTS

Support. This proposal seeks to address ambiguity in the regulatory language regarding reporting requirements, clarify management area boundaries, and adjust the reporting dates.

Specifically the proposals state:

> 1. The reporting and recording requirements are worded in a way that makes it difficult for officers to enforce the regulations as currently written.
>
> 2. The lower boundary limit on the Kasilof River will not change but there has been confusion because of different maps available that show Silver Salmon Rapids at different locations.
>
> 3. The permit due dates need to be aligned so that only one permit is needed for salmon and one for resident species. The season ends dates are different for the dip net season versus the rod and reel fishing season which would require multiple permits for the same species caught with different gear types.

We believe these changes help clarify implementation of the existing fisheries and would adjust Federal regulations following Alaska Board of Fisheries actions.

We view these changes as principally housekeeping and therefore recommend the Board pass them.

Kenai River Sportfishing Association

FP09-10 Executive Summary	
General Description	Proposal FP09-10 requests that Federal regulations concerning the slot size limit for early-run Chinook salmon in the Kenai River and daily harvest and possession limits for lake trout in Hidden Lake be aligned with changes made to State regulations by the Alaska Board of Fisheries in February 2008. *Submitted by the U.S. Fish and Wildlife Service*
Proposed Regulation	See analysis for the proposed regulatory language.
Southcentral Regional Council Recommendation	**Support**
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses.
ADF&G Comments	**Support with modification.** See comments following the analysis.
Written Public Comments	**1 Support**

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-10

SOUTHCENTRAL ADVISORY COUNCIL

Support Proposal FP09-10**.** This would provide Federal subsistence users with the opportunity to harvest larger Chinook salmon rather than requiring them to be released. The harvest reduction for lake trout in the Hidden Lake would help conserve the fish population and will have little or no effect on subsistence users.

STAFF ANALYSIS
FP09-10

ISSUES

Proposal FP09-10, submitted by the U.S. Fish and Wildlife Service, requests that Federal regulations concerning the slot size limit for early-run Chinook salmon in the Kenai River and daily harvest and possession limits for lake trout in Hidden Lake be aligned with changes made to State regulations by the Alaska Board of Fisheries in February 2008.

DISCUSSION

The proponent states that aligning Federal subsistence with State slot size limits for early-run Chinook salmon in the Kenai River, and reducing daily harvest limits for lake trout in Hidden Lake so that they are double State daily limits would be consistent with the original intent of Federal subsistence fishery regulations adopted in May 2007.

Existing Federal Regulations

§___.27(i)(10) Cook Inlet Area

(E) For Federally managed waters of the Kenai River and its tributaries…

(2) For early-run Chinook salmon less than 44 inches or 55 inches or longer, daily bag and possession limits are 2 per day and 2 in possession.

(3) For late-run Chinook salmon 20 inches and longer, daily bag and possession limits are 2 per day and 2 in possession.

(4) Annual harvest limits for any combination of early- and late-run Chinook salmon are 4 for each permit holder…

(G) For Federally managed waters of the upper Kenai River and its tributaries above Skilak Lake outlet at river mile...

(1) For lake trout 20 inches or longer, daily bag and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily bag and possession limits are 15 fish per day and 15 in possession. For Hidden Lake, daily limits are 4 per day and 4 in possession regardless of size.

Proposed Federal Regulation

§___.27(i)(10) Cook Inlet Area.

(E) For Federally managed waters of the Kenai River and its tributaries…

*(2) For early-run Chinook salmon less than ~~44~~ **46** inches or 55 inches or longer, daily ~~bag~~ **harvest** and possession limits are 2 per day and 2 in possession.*

(3) For late-run Chinook salmon 20 inches and longer, daily bag and possession limits are 2 per day and 2 in possession.

(4) Annual harvest limits for any combination of early- and late-run Chinook salmon are 4 for each permit holder...

(G) For Federally managed waters of the upper Kenai River and its tributaries above Skilak Lake outlet at river mile 50…

(1) For lake trout 20 inches or longer, daily bag and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily bag and possession limits are 15 fish per day and 15 in possession. For Hidden Lake, daily ***harvest and possession*** *limits are* ~~*4*~~***2*** *per day and* ~~*4*~~***2*** *in possession regardless of size.*

Existing State Regulations

State of Alaska sport fishing regulations for the Kenai Peninsula allow each angler a total annual limit of five Chinook salmon 20" or longer from fresh waters of Cook Inlet north of the latitude of Point Adam, and from Cook Inlet salt waters. Of the total annual limit of five Chinook salmon, no more than two may be taken from the Kenai River, and beginning with the 2008 season, Chinook salmon longer than 20" but less than 28" harvested in the Kenai River from January 1 through June 30 are not included as part of the annual limit.

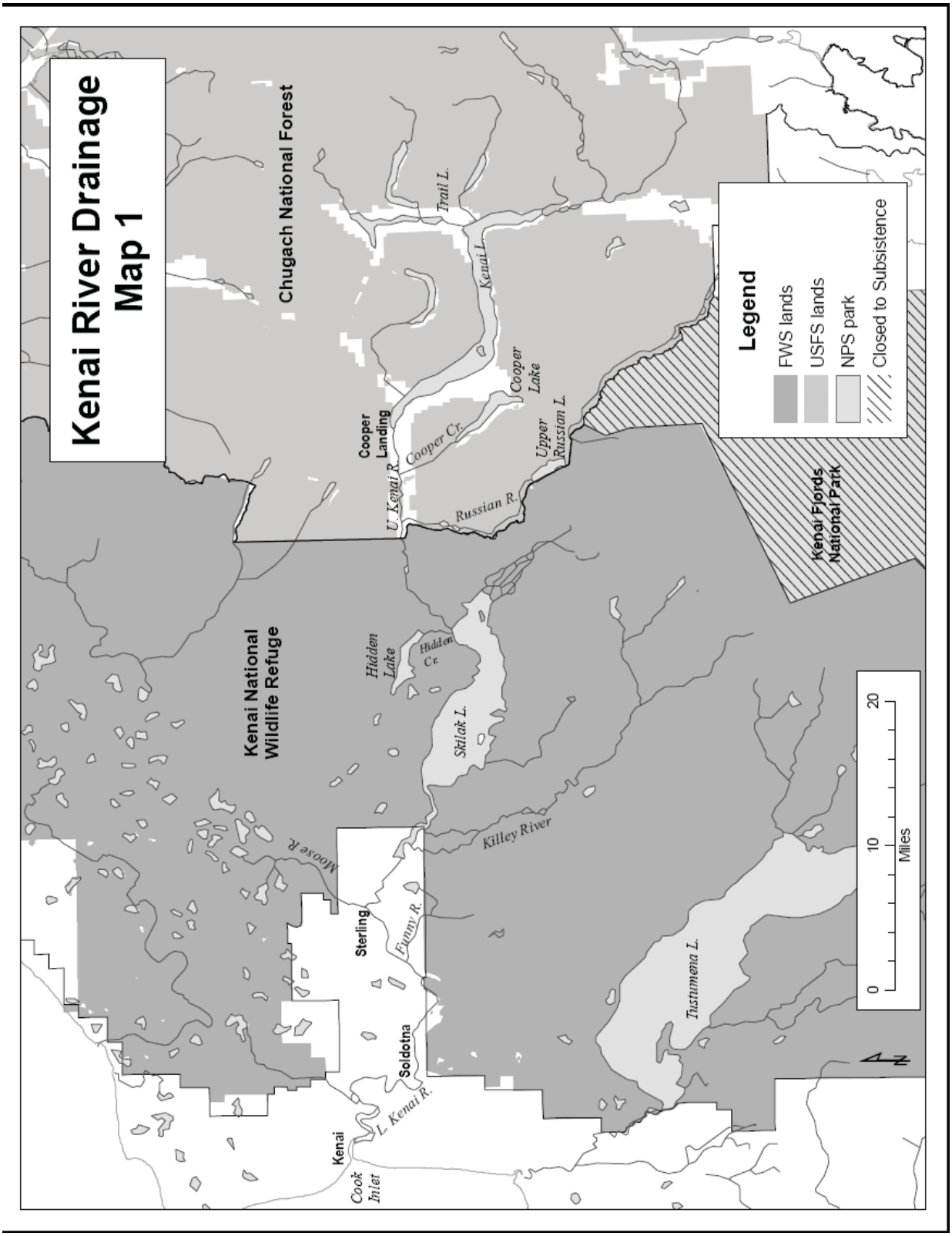
During its February 2008 meeting, the Alaska Board of Fisheries adopted several sport fishery regulation changes that took effect April 15, 2008. Three of these changes are relevant to Federal subsistence fishery proposal FP09-10. First, the slot limit for the Kenai River early-run Chinook salmon was changed, and now all retained early-run Chinook salmon must be either less than 46 inches in length or 55 inches or longer in length. Second, while the annual limit of two Chinook salmon from the Kenai River was not changed, Chinook salmon less than 28 inches in length taken from January 1 through June 30 are not included in this limit. Third, the lake trout daily limit for Hidden Lake was reduced to one per day and one in possession regardless of size.

Extent of Federal Public Waters

For purposes of this discussion, the phrase "Federal public waters" is defined as those waters described under 50 CFR 100.3. For the Kenai River drainage, Federal public waters include waters within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge and Chugach National Forest (**Map 1**). This includes Kenai Lake and its tributaries and all waters downstream to the confluence of the upper branch of the Killey River, approximately 2 miles of the mainstem Kenai River at approximately RM 25 (known locally as Moose Range Meadows), and most of the upper reaches of tributaries below Skilak Lake including the Moose, Killey, and Funny rivers.

Customary and Traditional Use Determinations

In the Kenai Peninsula District for waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest, residents of Cooper Landing and Hope have a positive customary and traditional use determination for all fish and residents of Ninilchik have a positive customary and traditional use determination for salmon.


Kenai River Drainage
Map 1
Chugach National Forest
Trail L.
Kenai L.
Cooper Lake
Upper Russian L.
Cooper Landing
Cooper Cr.
U. Kenai R.
Russian R.
Kenai Fjords National Park
Legend
FWS lands
USFS lands
NPS park
Closed to Subsistence
Kenai National Wildlife Refuge
Hidden Lake
Hidden Cr.
Skilak L.
Killey River
Moose R.
Sterling
Funny R.
Soldotna
L. Kenai R.
Kenai
Cook Inlet
Tustumena L.
0
10
20
Miles
N

Regulatory History

Pre- and Early Statehood Fisheries

Until 1952 freshwater streams in the Kenai Peninsula were open to subsistence fishing, but poorly regulated commercial fisheries decimated salmon runs. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel was allowed for "personal use" (Fall et al. 2004).

After 1952, subsistence salmon users in the Cook Inlet Area harvested fish under personal use and sport fish regulations alongside allocation priorities directed toward the recreational fisheries for the Chinook, sockeye, and coho salmon runs and the commercial fisheries for the sockeye, chum and pink salmon runs (Braund 1980:15–18).

State Fisheries

In 1992, the State classified most of the Cook Inlet Area, including the Kenai and Kasilof River drainages, as a non-subsistence area (5AAC 99.015(3)). The only State subsistence fisheries in Cook Inlet occur in areas that are not accessible from the road system, including the Tyonek, Windy Bay, Port Chatham, Kyuktolik, and Port Graham subdistricts, as well as portions of Seldovia Bay and the Yentna River drainage.

The State has a regulatory management plan for Upper Cook Inlet salmon (5 AAC 21.363) that provides the Alaska Board of Fisheries with guiding principles and mandatory criteria to use when adopting management plans for specific stocks. Commercial and sport fisheries are complex and intensively managed, and there are five management plans specific to Kenai River salmon stocks (5 AAC 21.359, 5 AAC 21.360, 5 AAC 21.363, 5 AAC 21.365, and 5 AAC 56.070). These management plans provide goals for sustained yield, guidance for mixed-species and mixed-stock fisheries, and instructions for allocation between competing fisheries.

The State has a regulatory management plan for Upper Cook Inlet personal use salmon fisheries (5 AAC 77.540). This plan established four personal use fisheries in Upper Cook Inlet: Kasilof River dip net, Kasilof River set gillnet, Kenai River dip net, and Fish Creek dip net. Unlike subsistence fisheries, personal use fisheries do not have a priority over other existing uses. Personal use fisheries are open to all residents of Alaska, require a sport fishing permit and household permit, and occur in marine and intertidal waters outside of Federal public lands. These fisheries target sockeye salmon, the species of greatest abundance and for which the best stock assessment information is available. The current annual harvest limit is 25 salmon and 10 flounder for the head of each household and 10 salmon for each additional household member. Incidentally caught coho, pink, and chum salmon may be retained as part of the annual limit. No retention of Chinook salmon is allowed in the Kasilof River dip net fishery, while Chinook salmon may be retained in the Kasilof River set gillnet fishery as part of the annual limit. The annual household limit is the combined harvest from all personal use fisheries, and cannot include more than one Chinook salmon.

The State administers educational fisheries for 5 groups in the Central (Kenaitze Tribal Group, Ninilchik Traditional Council, Ninilchik Native Descendents, Ninilchik Emergency Services, and Anchorage Point VFW) and 6 groups in the Northern (Knik Tribal Council, Big Lake Cultural Outreach, Intertribal Native Leadership, Eklutna Village, Tyonek Village, and Tim O'Brien) Districts of Upper Cook Inlet under the provisions of 5 AAC 93.200 - 93.235 (Shields 2007). Educational fisheries are based upon applications that address standards set out in regulation. Specific provisions for these fisheries have varied, but permits

have allowed operation of either one or two set gillnets in marine waters in addition to use of traditional methods in freshwaters, including stick fence weirs, grass baskets, and dip nets made from tree roots using materials that naturally occur in the area. For the Kenai River, only the Kenaitze Tribal Group has been issued an educational permit. The permit currently allows this group to harvest 8,000 salmon annually, including up to 300 Chinook and 1,000 coho salmon. In 2007, the Kenaitze Tribal Group total harvest was 4,628 salmon, consisting of 25 Chinook, 3,941 sockeye, 543 pink, and 119 coho salmon.

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Federal Subsistence Fisheries

Federal regulations for subsistence fisheries were first established in 1999. For salmon, trout, Dolly Varden, and char in Cook Inlet there was no customary and traditional use determination; therefore, all rural residents of Alaska qualified under the Federal program as eligible subsistence users. In 2002, regulations for take in Cook Inlet were established for salmon, trout, Dolly Varden, and char. This subsistence fishery requires a permit, and seasons, harvest and possession limits, and methods and means for take were identical to State of Alaska sport fishing regulations. The Federal Subsistence Board (Board) established this fishery as an interim measure to provide some subsistence opportunity in Cook Inlet for rural residents, pending collection of additional information on community and area-specific harvest patterns to refine customary and traditional use determinations as well as regulations for take. The Board concluded that this information was necessary because of the unique circumstances of the Kenai Peninsula. Rural communities are interspersed among much larger non-rural communities, and no subsistence fisheries have been allowed in the freshwaters of the Kenai Peninsula for over 50 years.

The Board did not consider any further regulatory proposals for Cook Inlet until 2005. With new information available (Fall et al. 2004), the Board took up consideration of customary and traditional use determinations, and continued to defer proposals for take until completion of those deliberations. During this time, no proposals for harvest were under consideration, and regulations for subsistence harvest were identical to State of Alaska sport fishing regulations with one exception. In November 2006, the Board adopted FSA06-01b which provided a temporary 2006-2007 winter subsistence fishery for resident species in Tustumena Lake. The Board considered fishery regulatory proposals for Cook Inlet in both 2007 and 2008, and adopted several proposals establishing subsistence fisheries for salmon and resident fish species in the Kenai and Kasilof River drainages. These include dip net salmon fisheries at designated sites in the Kenai, Russian, and Kasilof Rivers; rod and reel salmon and resident species fisheries in the Kenai and Kasilof River drainages; an under-the-ice gillnet and jig resident species fishery in Tustumena Lake, and a temporary fish wheel salmon fishery in the Kasilof River.

Biological Background and Harvest History

Early-Run Chinook Salmon

Most early-run Chinook salmon spawn in Kenai River tributaries, and the State's Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan (5 AAC 56.070) establishes escapement objectives and guidelines for the management of all existing fisheries harvesting this run. This plan also tries to ensure that the age and size composition of the harvest closely approximates that of the run. The primary harvest of this run occurs within the sport fishery. Most of the sport harvest is taken in the Kenai

River, although the marine sport fishery takes an undetermined, but likely small number, of Kenai River early-run Chinook salmon based on tag recoveries (King and Breakfield 2002). The State manages other fisheries to minimize the harvest of this run. The commercial and personal use fisheries open after most early-run Chinook salmon have entered the Kenai River, and the personal use fishery has a seasonal limit of one Chinook salmon per household. The Kenaitze Tribe's educational fishery has an annual limit of 300 Chinook salmon, all of which may be taken prior to July 1. The optimal escapement goal range set by this plan is 5,300 to 9,000 early-run Chinook salmon, which is estimated with sonar equipment installed in the lower Kenai River. To achieve the escapement goal, daily sonar estimates of Chinook salmon passing the sonar site and estimates of the sport harvest from creel surveys are used in a run timing model to project total inriver return, total harvest, and final spawning escapement. If escapement is projected to fall below the lower end of the goal's range, the sport fishery is restricted by steps to catch-and-release only and ultimately to closure. Bait cannot be used until escapement is projected to reach the upper end of the goal's range. To help ensure that the age and size composition of the harvest is similar to that of the run, there is a slot limit that specifies the size of Chinook salmon that may be retained. The slot limit is in effect from January 1 to June 30 from the Kenai River mouth upstream to the outlet of Skilak Lake, and from July 1 to 14 from the Soldotna Bridge upstream to the outlet of Skilak Lake.

All sport fishing for early-run Chinook salmon in the Kenai River occurs below Skilak Lake. The bag and possession limit for Chinook salmon 20 inches or longer is 1 per day and 1 in possession. Additionally, there is an annual limit of 2 Chinook salmon 20 inches or longer from the Kenai River. In March 2003, the Alaska Board of Fisheries adopted a slot limit regulation that only allowed retention of early-run Chinook salmon less than 44 inches or greater than 55 inches in length until July 1 downstream of the Soldotna Bridge and until July 15 upstream of the bridge. In 2008, the slot limit was changed to allow retention of early-run Chinook salmon less than 46 inches or greater than 55 inches in length. The purpose of the slot limit is to reverse a declining abundance trend in older, larger Chinook salmon, primarily age-7 (5-ocean) Chinook salmon, while still allowing anglers the opportunity to keep relatively rare trophy-sized individuals greater than 55 inches long. In 2008, the Alaska Board of Fisheries also adopted a regulation allowing sport anglers the opportunity to increase their harvest of small early-run Chinook salmon by not counting harvested fish less than 28 inches long as part of their Chinook salmon annual harvest limit.

The annual sport fishery harvest of early-run Kenai River Chinook salmon during 1996–2005 has ranged from 899 to 8,129, with an average of 3,763 (**Table 1**). These harvests do not include the estimated hook-and-release mortality of about 7.6% of the total catch (Bendock and Alexandersdottir 1992). The Kenaitze Tribe's educational fishery harvest has ranged from 46 to 198 early-run Chinook salmon during the time period 1997–2006, with an average of 108. No estimates of the number of early-run Kenai River Chinook salmon harvested in commercial or personal use fisheries are available, but due to the timing of these fisheries these harvests are assumed to be negligible.

The assessment program for early-run Kenai River Chinook salmon is very good. Escapement into the Kenai River system is estimated using sonar equipment installed at river mile 8.5. Early-run Chinook salmon enter the Kenai River from about late-May through late-June. Most early-run Chinook salmon spawn in Kenai River tributaries below the outlet of Skilak Lake, and most of these spawners are bound for the Killey and Funny rivers. On average, only about 7% of all early-run Chinook salmon spawn in tributaries within and above Skilak Lake (Bendock and Alexandersdottir 1992, Burger et al. 1983) (**Table 2**). All escapements during the time period 1996–2003 have been within or above the optimal escapement goal range of 5,300 to 9,000 Chinook salmon (**Table 1**). Spawning escapements during this period have ranged from 6,185 to 17,276 early-run Chinook salmon, with an average of 11,330. A

Table 1. Kenai River system early-run Chinook salmon harvest and spawning escapement information, 1996-2006. The number of Kenai River early-run Chinook salmon within commercial and personal use harvests has not been estimated, but is assumed to be negligible since these fisheries begin after most of this run has entered the Kenai River. Sport harvests do not include either the marine harvest, which is unknown, or estimated hook-and-release mortality, which is about 7.6% (Bendock and Alexandersdottir 1992). N/A = data not available.

	Harvest[a,b,c]				
Year	Commercial	Sport	Personal Use	Educational	Escapement[a,d,e]
1996	N/A	6,623	N/A	104	16,595
1997	N/A	6,437	N/A	122	8,176
1998	N/A	1,170	N/A	131	7,760
1999	N/A	8,129	N/A	114	17,276
2000	N/A	1,818	N/A	124	10,476
2001	N/A	2,397	N/A	198	14,074
2002	N/A	899	N/A	48	6,185
2003	N/A	2,839	N/A	126	10,097
2004	N/A	2,283	N/A	72	15,274[f]
2005	N/A	5,035	N/A	76	20,450[f]
2006	N/A	4,931	N/A	65	23,326[f]
2007	N/A	N/A	N/A	N/A	15,904[f]

[a]Papas and Marsh (2005)
[b]ADF&G (2008b)
[c]Shields (2006 and 2007)
[d]ADF&G (2008c)
[e]The total Kenai River system optimal escapement goal is 5,300 to 9,000 Chinook salmon.
[f]This is an inriver estimate that does not account for sport fish harvests above the counting site.

sustainable harvest level for the early run is about 8,000 Chinook salmon, and the sport fishery does not always harvest the entire harvestable surplus.

No Chinook salmon were reported to have been harvested from the Kenai River drainage by Federally qualified subsistence users during 2007 or 2008 (Palmer 2008 pers. comm.).

Lake Trout

All information from lake trout studies by ADF&G and USFWS relate to fisheries within Federal public waters. There are no lake trout abundance estimates available for the Kenai River drainage. Size and age information has occasionally been collected from Hidden Lake from 1960 to 1994, and will also be collected during 2008. Prior to 1992, ADF&G collected lake trout for population age structure data using gillnets. For three years beginning in 1992, USFWS conducted a creel survey that included size and age information. Little information exists about lake trout in other parts of the drainage. References to lake trout harvests in other Federal public waters are limited to Skilak and Kenai lakes, where effort is viewed as generally small and harvests are limited to a few hundred fish annually.

Lake trout are long lived, slow growing, and have a well-documented history of over-exploitation in the Copper and Tanana river drainages. Sustainable exploitation for those populations is no greater than

Table 2. Spawning destinations of radio tagged early-run Chinook salmon in the Kenai River.

	Bendock and Alexandersdottir (1992)		Burger et al. (1983)	Total for All Studies	
Destination	1990	1991	1980-1981	Number	Percent
		Above the Outlet of Skilak Lake			
Skilak Lake	2	0		2	0.9%
Juneau Creek	1	1	1	3	1.4%
Russian River	0	0		0	0.0%
Quartz Creek	1	2	1	4	1.9%
Grant Creek	1	0		1	0.5%
Interlake	5	0	0	5	2.4%
Total	10	3	2	15	7.1%
Percent	10.6%	3.9%	5.0%	7.1%	
		Outlet of Skilak Lake to Soldotna Bridge			
Upper Kenai River	3	1	0	4	1.9%
Killey River (including Benjamin Creek)	43	49	30	122	57.8%
Funny River	19	16	6	41	19.4%
Middle Kenai River	10	5	0	15	7.1%
Total	75	71	36	182	86.3%
Percent	79.8%	92.2%	90.0%	86.3%	
		Below Soldotna Bridge			
Slikok Creek	1	2	1	4	1.9%
Lower Kenai River	8	1	1	10	4.7%
Total	9	3	2	14	6.6%
Percent	9.6%	3.9%	5.0%	6.6%	
		All Destinations			
Totals	94	77	40	211	

10% (Burr 1992, Scanlon 2004, Szarzi and Bernard 1997). Age and size sampling in both Tustumena and Skilak Lake demonstrate similarly structured populations to those in the Copper and Tanana River drainages (Sonnevil 2006, pers. comm.) and are indicative of low reproductive potential.

Lake trout fishing in the Kenai River drainage is generally limited to fall and spring at the outlet of Kenai and Skilak Lake, and an open-water and ice fishery on Hidden Lake. Historically, the fishery was managed for high-yield with a bag limit of 10 through 1996, but beginning in 1997, the bag limit was reduced to 2 of any size in Hidden Lake and two over 20 inches in the remainder of the drainage. These restrictions were a result of well documented over-exploitation leading to fishery restrictions and closures in the Copper and Tanana river drainages (Burr 1992), as well as a declining fishery at Hidden Lake **(Figure 1)**.

The lake trout harvest in Kenai River and Hidden Lake fisheries has decreased over the last two decades, while the fisheries in Skilak and Kenai Lake have remained reasonably stable **(Table 3)**. Mean harvest in Hidden Lake declined by about 73% after 1996 from a 1977-1996 mean of 1,353 to a 1997-2006 mean

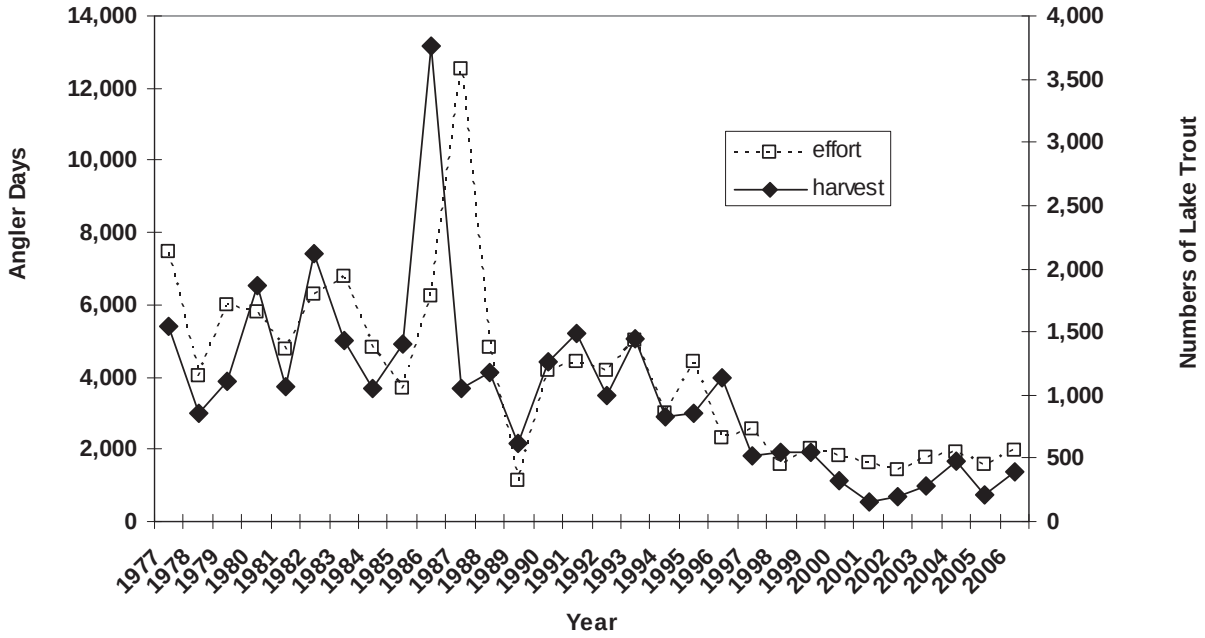

Figure 1. Angler effort and harvest for lake trout, Hidden Lake, 1977-2006.

of 367, and sport fishing effort has shown a similar decline (**Figure 1 and Table 3**). Lake trout yield potential for Hidden Lake, based on a lake surface area model used in combination with estimated mean lake trout weight (Scanlon 2004), is probably about 400 lake trout per year (ADF&G 2008a: pages 198-199). This suggests that the lake trout population in Hidden Lake was heavily overexploited in past years and probably has not yet recovered.

No lake trout were reported to have been harvested from Hidden Lake or any other portion of the Kenai River drainage by Federally qualified subsistence users during 2007 or 2008 (Palmer 2008 pers. comm.).

Effects of the Proposal

The proposed change to the Kenai River early-run Chinook salmon slot limit would be consistent with State regulations that have been adopted to rebuild this run. The slot limit provides protection to larger, older Chinook salmon, the component of the early run that has been declining. By realigning Federal to State regulations for this run, Federally qualified subsistence fishers would be allowed to harvest slightly larger early-run Chinook salmon within the lower range of the slot limit. The actual effect of adopting the proposed regulations on future Federal subsistence harvests is difficult to predict. Prior to 2007, Federal and State daily and annual harvest limits for Chinook salmon in rod and reel fisheries were the same. Beginning in 2007, Federal subsistence rod and reel daily and annual harvest limits were set at double those for the State sport fishery, but no Chinook salmon harvests were reported by Federally qualified subsistence fishers in 2007 or 2008.

The proposed change to the Hidden Lake daily harvest limit for lake trout would also be consistent with State regulations adopted to rebuild this population. While recent annual State sport fishing harvests

Table 3. Kenai River lake trout harvest as determined by Statewide Harvest Survey 1977-2006.

Year	Kenai River	Hidden Lake	Skilak Lake	Kenai Lake	Total
1977	252	1,542			1,794
1978	524	850			1,374
1979	409	1,109			1,518
1980	112	1,860			1,972
1981	723	1,069			1,792
1982	628	2,117			2,745
1983	650	1,437			2,087
1984	535	1,047			1,582
1985	954	1,405			2,359
1986	972	3,761			4,733
1987	315	1,050		706	2,071
1988	893	1,183	546		2,622
1989	296	619	86	105	1,106
1990	256	1,260	260	167	1,943
1991	497	1,494	363	485	2,839
1992	450	995	455	185	2,085
1993	335	1,449	233	816	1,786
1995	178	852	626	552	2,208
1996	1,199	1,131	325	385	3,040
1997	130	524	504	299	1,457
1998	117	550	355	181	1,203
1999	293	545	621	623	2,082
2000	115	318	543	202	1,178
2001	156	160	72	980	1,368
2002	173	200	147	886	1,406
2003	243	285	230	226	984
2004		482	529		1,011
2005		216	54	631	901
2006		386	23		409
Mean:					
1977-2006	437	1,024	338	451	1,883
1997-2006	175	367	308	504	1,200

have been within sustainable limits, this population has probably not yet fully recovered from excessive fishing pressure that continued through the late 1990s. Reducing existing Federal subsistence fishing daily harvest limit for lake trout in Hidden Lake by half would contribute to population rebuilding efforts and still provide Federally qualified subsistence fishers with the opportunity to harvest twice as many lake trout per day as sport anglers. The actual effect of adopting the proposed regulations on future Federal subsistence harvests is difficult to predict. Prior to 2007, Federal and State daily limits for lake trout in rod and reel fisheries were the same. Beginning in 2007, Federal subsistence rod and reel daily limits were at double those for the State sport fishery, but no lake trout harvests were reported by Federally qualified subsistence fishers in 2007 or 2008.

OSM CONCLUSION

Support Proposal FP09-10.

Justification

The regulatory changes requested by the proponent would maintain the intent of current Federal regulations when the Board adopted them in May 2007. The proposed changes would realign early-run Chinook salmon slot size limits with recently adopted changes to State regulations for the Kenai River, and would set daily harvest limits for lake trout in Hidden Lake at a level twice that now allowed for sport anglers. Based on available information, the proposed changes should provide for sustainable fisheries by conserving age-7, early-run Chinook salmon in the Kenai River, a major component of a run that is being rebuilt; allowing additional harvest opportunities for smaller early-run Chinook salmon; and reducing exploitation on the lake trout population in Hidden Lake, a population that has been overexploited and has probably not yet recovered. While no Chinook salmon were reported to have been harvested in the Kenai River during the Federal subsistence rod and reel salmon fishery in 2007 or 2008, adopting the proposed changes to the early-run Chinook salmon slot limit would provide Federally qualified subsistence users the opportunity to harvest slightly larger Chinook salmon within the lower range of the slot limit rather than being required to release them. Adopting the proposed reduction to the daily harvest limit for lake trout in Hidden Lake is expected to have little or no effect on Federally qualified subsistence users, since there was no reported harvest of this species in Hidden Lake in 2007 or in 2008.

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INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-10

The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses.

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-10 Modify Kenai River Chinook and Hidden Lake Lake Trout Harvest Limits

Introduction: Proposal FP09-10 is intended to reflect and correspond to the Alaska Board of Fisheries regulatory changes made in February 2008. It proposes the following specific changes:

1. Reduce the slot limit for Kenai River early-run Chinook salmon from 44"-55" in length to 46"-55" in length. This will allow retention of any fish that are less than 46" in length or greater than 55" in length, thus increasing opportunity of retaining Chinook salmon.

2. Reduce the federal subsistence daily harvest and possession limit for Hidden Lake lake trout from 4 fish per day of any size down to two fish per day of any size. (Note: The new State limit is one fish per day, which is half the proposed federal limit).

Impact on Subsistence Users: The Kenai River slot limit reduction will provide additional opportunity to harvest early-run Chinook salmon. Decreasing the Hidden Lake lake trout daily harvest limit from four fish per day to two fish per day will reduce the amount of fish a federal subsistence user can harvest on a daily basis.

Opportunity Provided by State: The Kenai and Kasilof Rivers are located in the Anchorage-MatSu-Kenai Nonsubsistence area designation under state law. The State provides a broad array of personal use, sport, and educational fisheries in these areas to meet needs for personal and family consumption as well as cultural purposes. Adequate opportunities for harvest of lake trout and Arctic char/Dolly Varden presently occur under State sport fishing regulations.

Conservation Issues:

1. The early-run Kenai River Chinook salmon stock is currently considered healthy and is managed for sustainability through a myriad of conservative regulations developed by the State over decades of managing the stock. The extensive list of restrictions placed upon the sport fishery is credited for the current sustainable stock level. The sport fishery is presently managed by using a combination of: (1) a "slot limit" that prohibits harvest of early-run Chinook salmon between 46 inches and 55 inches in length to protect seven-year-old spawners and help preserve genetic characteristics and diversity of the Kenai River Chinook salmon stocks; (2) a daily harvest limit of one such fish; and (3) a two-fish annual limit (excluding fish less than 28 inches in length before June 30). The Alaska Department of Fish and Game (Department) supports the federal staff recommendation to mirror the Alaska Board of Fisheries February 2008 decision to reduce the early-run Kenai River Chinook salmon slot limit from 44"-55" to 46"-55" in length. The Alaska Board of Fisheries reviewed all available data and the Department analysis of this issue and determined slightly liberalizing the sport fishery by adjusting the slot limit was appropriate. This slight liberalization of the sport fishery was intended to provide additional opportunity to harvest available fish which have been determined to be in surplus of established escapement goals.

Although the Department supports the intent of the proposed modification of the early-run Kenai River Chinook salmon slot limit in the federal subsistence rod and reel fishery, the Department does not support maintaining the liberal federal subsistence fishery early-run Chinook salmon daily/annual harvest limit of two fish per person, which will be easier to achieve with the reduced slot limit and which could create conservation concerns if widely utilized. The Department strongly requests the Federal Subsistence Board (Federal Board) to consider all the information previously submitted to the Federal Board and take a conservative approach that mirrors the Alaska Board of Fisheries by adopting the one fish daily harvest limit. This action would be consistent with the proponent's stated intent to adopt changes corresponding to those in the State regulation.

2. Because of over-exploitation concerns, the Alaska Board of Fisheries recently reduced the State harvest limit for lake trout in Hidden Lake to one (from two) fish of any size. The Department recommends that the Federal Board adopt a corresponding reduction to two (from four) lake trout as the harvest limit and place a maximum size restriction of 20" in length for one of the two lake trout. Little is known about lake trout population sizes and appropriate harvest levels in Hidden Lake. The Department is very concerned that, without good stock assessment information and reporting, excessive harvest may not be detected in time. Lake trout, which are known to be a long-lived, slow-growing species susceptible to over-exploitation, require many years to rebuild populations after depletion, if they are able to do so at all.

Jurisdiction Issues: The Department requests detailed land status maps that distinctly illustrate land ownership, easements, and exact boundaries within which it is claimed federal regulations would apply and justification for claiming those boundaries. Portions of both the upper and lower Kenai and Kasilof rivers are bordered by state or private lands including areas where federal claims of jurisdiction exist. Fishers need to be provided copies of these detailed maps because the State will enforce its regulations on fishers standing on nonfederal land while fishing.

Recommendation: Support with modification as explained above, consistent with the proponent's intent to complement the Alaska Board of Fisheries changes and with ANILCA's conservation purposes, as follows:

1. Support the slot limit liberalization for Kenai early-run Chinook salmon but request modification of the daily harvest limits from two to one.

2. Support reducing lake trout harvest limits in Hidden Lake from four to two fish daily and request modification to allow harvest of 2 lake trout per day of which only one can be over 20" in length.

The Department's recommended modified regulation language:

§___.27(i)(10) Cook Inlet Area.

(E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under

*paragraph (i)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager at the end of the fishing season. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (i)(10)(iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56), except for the following ~~bag~~ **harvest** and possession limits:…*

*(2) For early-run Chinook salmon less than ~~44~~ **46** inches or 55 inches or longer, daily ~~bag~~ **harvest** and possession limits are ~~2~~**1** per day and ~~2~~**1** in possession.*

*(3) For late-run Chinook salmon 20 inches and longer, daily ~~bag~~ **harvest** and possession limits are 2 per day and 2 in possession.*

(4) For all Chinook salmon less than 20 inches in length, daily harvest and possession limits are 10 per day and 10 in possession.

*(~~4~~**5**) Annual harvest limits for any combination of early- and late-run Chinook salmon are 4 for each permit holder**. Annual harvest limits do not include Chinook salmon less than 28 inches long harvested May 1 through June 30 and Chinook salmon less than 20 inches long harvested July 1 through July 31.***

*~~(5)~~(6) For other salmon 16 inches and longer, the combined daily ~~bag~~ **harvest** and possession limits are 6 per day and 6 in possession, of which no more than 4 per day and 4 in possession may be coho salmon, except for the Sanctuary Area and Russian River, for which no more than 2 per day and 2 in possession may be coho salmon.*

(G) For Federally managed waters of the upper Kenai River and its tributaries above Skilak Lake outlet at river mile 50…

*(1) For lake trout 20 inches or longer, daily ~~bag~~ **harvest** and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily ~~bag~~ **harvest** and possession limits are 15 fish per day and 15 in possession. For Hidden Lake, daily **harvest and possession** limits are ~~4~~**2** per day and ~~4~~**2** in possession **of which only one can be 20" or longer**~~regardless of size~~.*

WRITTEN PUBLIC COMMENTS

Support. The Alaska Board of Fisheries recently (February 2008) passed regulatory changes affecting the management of Chinook salmon and Lake Trout in upper Cook Inlet waters. This proposal would help bring into alignment the Federal and State regulations.

Lake trout harvest limits are proposed to be reduced by this proposed action. This is necessary to address conservation concerns for this stock. It is our understanding that a study is being conducted by the Kenai Fish and Wildlife Field Office during the 2008 field season, the results of which will be helpful in assessing the population status of lake trout in Hidden Lake.

We support the changes to king salmon and lake trout regulations proposed.

Kenai River Sportfishing Association

FP09-11 Executive Summary	
General Description	Proposal FP09-11 requests that Federal subsistence fishing regulations be aligned with State subsistence fishing regulations for the Chignik Management Area to allow subsistence salmon fishing in the Chignik Lake tributaries of Clark River and Home Creek from their confluence with Chignik Lake upstream one linear mile. *Submitted by the Bristol Bay Regional Advisory Council*
Proposed Regulation	*Chignik Area — Salmon* *§___.27(i)(8)(ii) Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes,* ***except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one linear mile.***
Bristol Bay Regional Council Recommendation	**Support** Proposal FP09-11 **with modification.** The modified regulation should read: *Chignik Area — Salmon* *§___.27(i)(8)(ii) Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes,* ***except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile.***
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses.
ADF&G Comments	**Oppose**
Written Public Comments	**None**

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-11

BRISTOL BAY REGIONAL ADVISORY COUNCIL

Support Proposal FP09-11 **with modification** to remove the word "linear" from the proposed regulatory language**.**

The modified regulation should read:

> *Chignik Area — Salmon*
>
> *§___.27(i)(8)(ii) Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes,* ***except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile.***

The Council supported the proposal with modification to remove the word linear from the proposed regulatory language and to describe the area only as "one mile." Conflicting interpretations as to who has jurisdiction of the resource should not hinder subsistence users. The Council supported the proposal with the caveat that the Federal Subsistence Board will address the issue of State and Federal jurisdiction.

STAFF ANALYSIS
FP09-11

ISSUES

Proposal FP09-11, submitted by the Bristol Bay Regional Advisory Council, requests that Federal subsistence fishing regulations be aligned with State subsistence fishing regulations for the Chignik Management Area to allow subsistence salmon fishing in the Chignik Lake tributaries of Clark River and Home Creek from their confluence with Chignik Lake upstream one linear mile.

DISCUSSION

The proposed regulation would provide Federally qualified subsistence users additional fishing areas, currently allowed under State regulations. In January 2008, the Alaska Board of Fisheries opened these areas to subsistence fishing under State regulations. The proposed changes would allow local residents to continue long-established fishing practices while providing additional harvest opportunities in Clark River and Home Creek.

Existing Federal Regulation

Chignik Area — Salmon

§___.27(i)(8)(ii) Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes.

Proposed Federal Regulation

Chignik Area — Salmon

§___.27(i)(8)(ii) Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes, ***except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one linear mile.***

Other Relevant Federal Regulations

§___.27(i)(8)(iv) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, you may not use purse seines. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

Existing State Regulation

5 AAC 01.475. Waters closed to subsistence fishing. (2) in Black Lake, or any tributary to Black Lake or Chignik Lake, except the waters of Clark River and Home Creek, from each of their confluences with Chignik Lake to a point one mile upstream.

Extent of Federal Public Waters

Federal public waters within the Chignik Management Area includes all waters south of the Alaska Peninsula that are within the area and within or adjacent to the Alaska Peninsula National Wildlife Refuge, Aniakchak National Monument and Preserve, and Alaska Maritime National Wildlife Refuge (**Map 1**). Chignik Lake, Chignik River, Clark River, and Home Creek are all within the boundary of the Alaska Peninsula National Wildlife Refuge (**Map 2**).

For purposes of this discussion, the phrase "Federal public waters" is defined as those waters described under 50 CFR 100.3.

Regulatory History

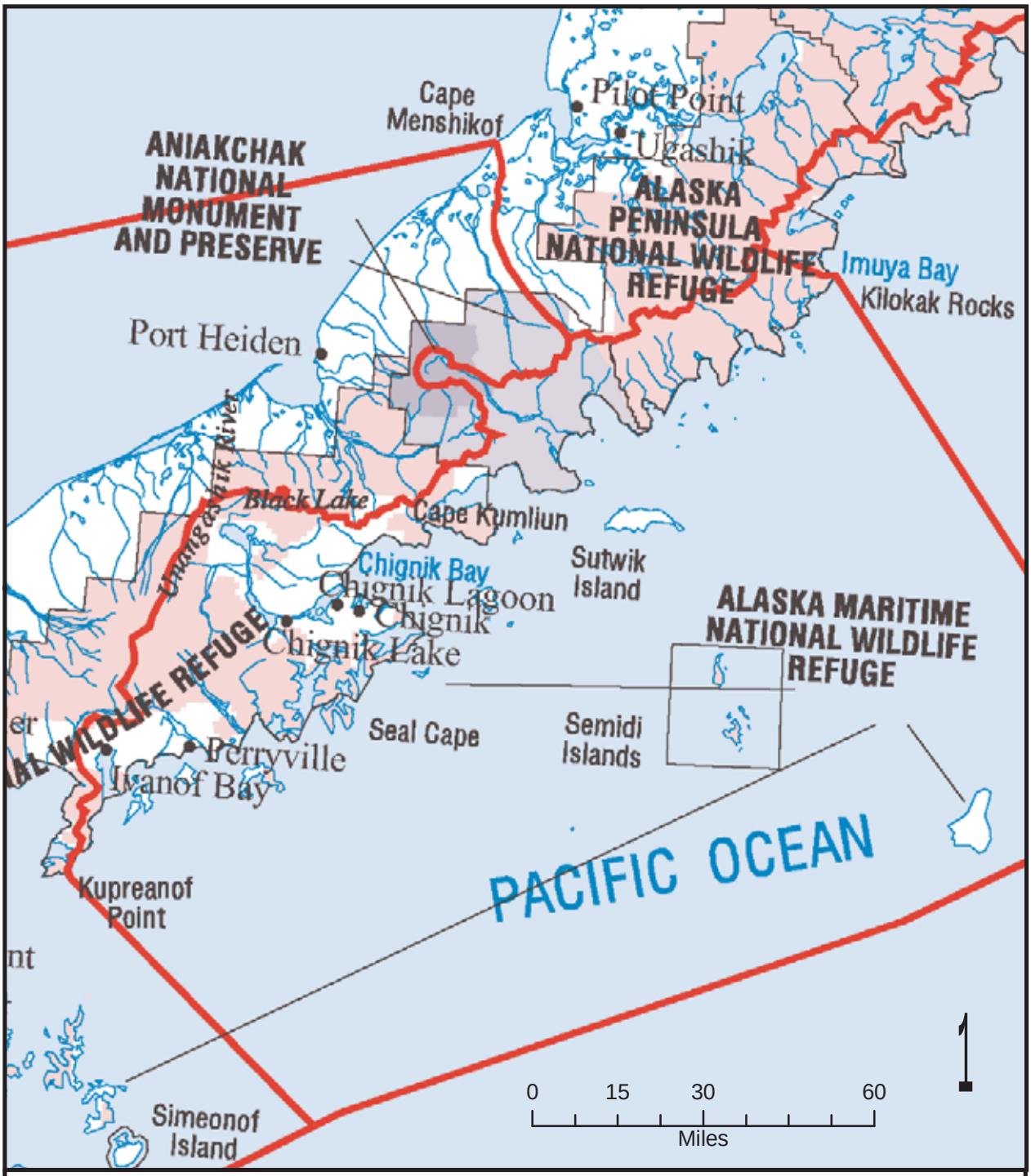
The Federal Subsistence Board (Board) adopted the current regulatory framework for the Chignik Management Area, including customary and traditional use findings, from existing State subsistence fishing regulations in 1999. The Board recently made regulatory changes for the Chignik Area in January 2006 and December 2007. In 2006, the Board amended *§___.27(i)(8)(i)* to align Federal regulations for all Federally qualified subsistence users with any openings, closures, and changes to fishing methods issued through State Emergency Orders as defined in Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action. In 2007, the Board amended *§___.27(i)(8)(vi)* to allow the take of salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by hand.

The Alaska Board of Fisheries most recently made changes to State subsistence fishing regulations for Chignik Management Area in January 2008. These changes included allowing subsistence salmon fishing in the Chignik Lake tributaries of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile. The State subsistence fishing regulation was originally adopted in 1985 and previously amended in 1993 and 2005 (ADF&G 2008). According to ADF&G staff comments at the 2008 meeting (ADF&G 2008), subsistence users had reported difficulties in obtaining late season sockeye salmon and also wanted a means to harvest an occasional fresh fish for immediate consumption. ADF&G recommended limiting subsistence fishing from the confluence of both tributaries upstream one mile to protect salmon spawning further upstream in that area. ADF&G further stated (ADF&G 2008) that local residents have traditionally used both the Clark River and Home Creek for subsistence fishing.

Background and Harvest History

Residents of local communities take salmon through subsistence, commercial, and sport fish opportunities with seines, gillnets, and/ or rod and reel (Hutchinson-Scarbrough and Fall 1996). Sockeye salmon are the target species in the Chignik Management Area accounting for over 50% of the subsistence harvests there in 1984 and 1989 (Hutchinson-Scarbrough and Fall 1996), although other salmon species are taken (**Table 1**).

Sockeye salmon are primarily taken by residents of Chignik Bay, Chignik Lake, and Chignik Lagoon because of the availability of sockeye salmon in Chignik watershed, as well as residents' preference for sockeye salmon (Hutchinson-Scarbrough and Fall 1996). Residents of Perryville and Ivanof Bay harvest mostly coho, pink, and chum salmon because sockeye salmon are rarely found in local rivers near these villages (Hutchinson-Scarbrough and Fall 1996). Some residents of Perryville and Ivanof Bay spend portions of spring and summer in Chignik or at fish camps on Chignik Lagoon, where they subsistence fish for sockeye and Chinook salmon (Hutchinson-Scarbrough and Fall 1996). Fresh sockeye salmon caught in the spring and early summer are smoked, kippered, salted, and frozen (Hutchinson-Scarbrough



FP09-11 Map 1
Chignik Area

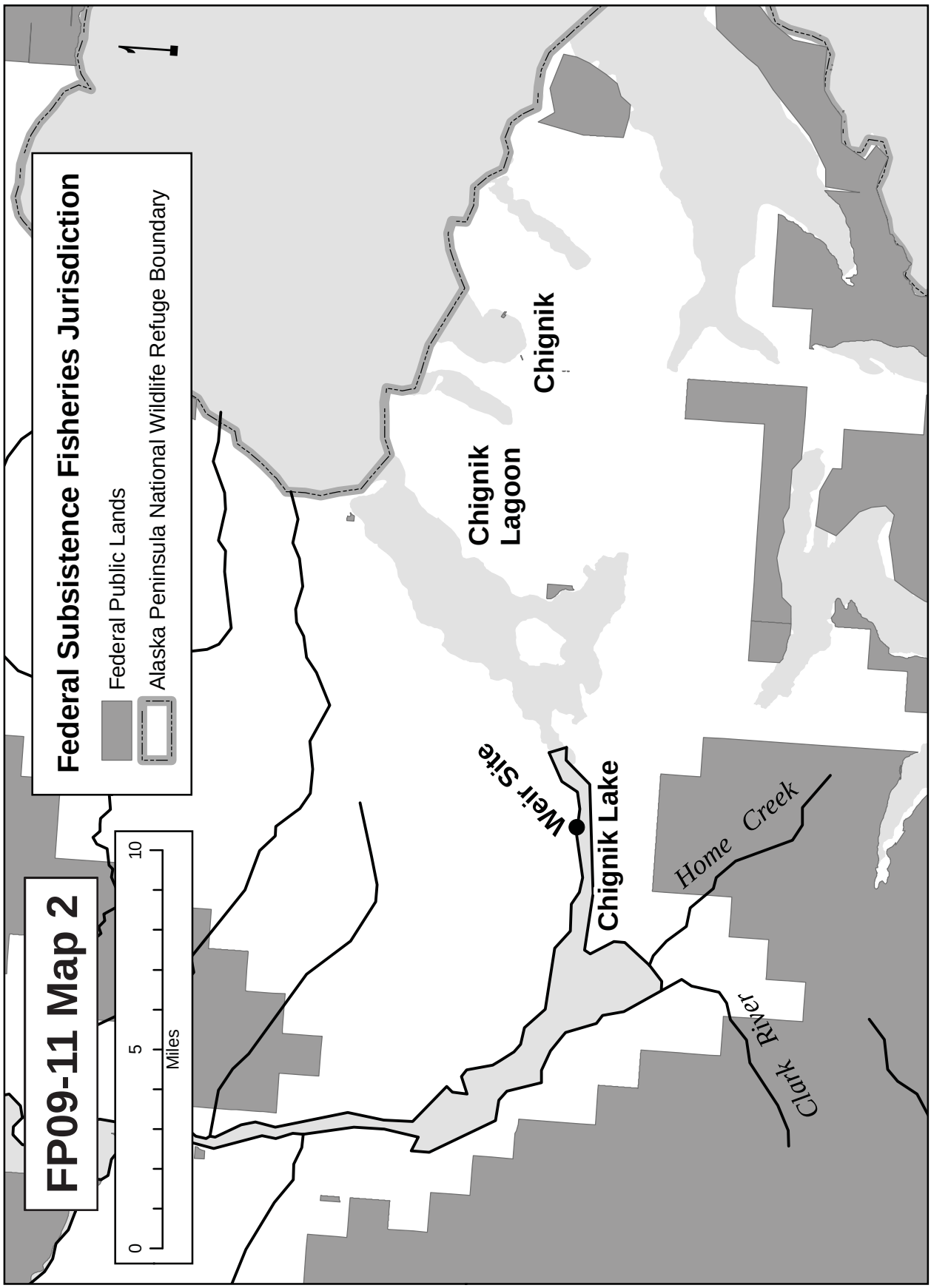

FP09-11 Map 2
Federal Subsistence Fisheries Jurisdiction
Federal Public Lands
Alaska Peninsula National Wildlife Refuge Boundary
0
5
10
Miles
1
Chignik
Chignik Lagoon
Weir Site
Chignik Lake
Home Creek
Clark River

Table 1. Subsistence salmon harvest by Chignik Area residents, 1980-2006 (Stichert, 2007)

Year	Permits Issued	Permits Returned	Chinook	Sockeye	Coho Pink	Chum
1980	82	37	6	12,475	478	169
1981	29	7	0	2,049	0	0
1982	59	15	3	8,532	2	0
1983	32	21	1	3,078	1,250	850
1984	77	64	23	8,747	330	204
1985	59	48	1	7,177	26	25
1986	74	38	4	10,347	98	77
1987	2	1	0	400	0	0
1988	80	34	9	9,073	54	142
1989	68	23	24	7,551	81	147
1990	72	23	103	8,099	470	115
1991	95	58	42	11,483	275	81
1992	98	19	55	8,648	305	145
1993	201	141	122	14,710	1,265	642
1994	219	122	165	13,978	1,720	382
1995	111	95	98	9,563	723	150
1996	119	104	48	7,357	2,204	355
1997	126	103	28	13,442	2,035	840
1998	104	72	91	7,750	1,007	186
1999	106	88	243	9,040	1,191	136
2000	130	112	163	9,561	1,185	517
2001	135	122	171	8,633	2,787	213
2002	120	86	74	10,092	390	23
2003	146	127	267	10,989	1,597	286
2004	104	57	88	7,029	1,047	202
2005	119	100	224	8,171	730	353
2006	113	79	258	8,079	1,035	275

and Fall 1996). In the fall, sockeye salmon are taken after turning red, just before or after spawning (Hutchinson-Scarbrough and Fall 1996). Red sockeye salmon are a valued product because they have less fat and can be dried without spoilage (Hutchinson-Scarbrough and Fall 1996). Also, cool fall weather allows for less interference from blow flies when fish are being dried.

In 2006, the subsistence salmon harvest was below both the recent 5- and 10-year averages (Stichert 2007). The 2007 subsistence harvest numbers are not currently available. Subsistence users reported difficulty in obtaining late season salmon. Addressing these concerns, ADF&G (January 2008) adopted a proposal to allow for subsistence salmon fishing in the Chignik tributaries of Clark River and Home Creek. Significant increase in the subsistence harvest is not likely.

Federal regulations require that Federally qualified subsistence users have a subsistence fishing permit (issued by the State of Alaska) to take salmon with seines or gillnets in the Chignik Area. However, Federally qualified subsistence users are not required to have a State permit to take salmon by snagging (hand line, rod and reel), spear, bow and arrow, or capture by hand in the Chignik Area, because State regulations do not allow the subsistence take of salmon by these methods. However, subsistence salmon

harvests using these methods would likely be low since most people use these methods to catch an occasional fresh fish.

Effects of the Proposal

If adopted, Federally qualified subsistence users would be provided additional opportunities to fish in areas currently open to people fishing under State subsistence regulations. This regulation could potentially create enforcement concerns by escalating the divergence between Federal and State regulations regarding method and means of harvest in this area. The additional fishing opportunity is not expected to greatly impact subsistence harvest levels or the sockeye salmon population within the Chignik Management Area.

OSM CONCLUSION

Support Proposal FP09-11 **with modification** to change linear mile to mile to clarify the areas open to subsistence fishing, reduce regulatory complexity, and enforcement concerns.

The modified regulation should read:

> *Chignik Area — Salmon*
>
> *§___.27(i)(8)(ii) Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes,* ***except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile.***

Justification

Adoption of Proposal FP09-11 would allow Federally qualified subsistence users to continue long-established fishing practices while providing additional harvest opportunities in Clark River and Home Creek. Federally qualified subsistence users would be provided the same opportunities to harvest salmon in the Chignik Lake tributaries of Clark River and Home Creek currently available to people fishing under State subsistence regulations. No adverse impacts on sockeye salmon stocks within the Chignik Management Area are expected. The recommendation to delete the word “linear” from the proposed regulatory language will clarify the areas open to subsistence fishing, reduce regulatory complexity and enforcement concerns.

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INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-11

The Interagency Staff Committee found the staff analysis to be a complete and accurate evaluation of the proposal, and the recommendation of the Regional Advisory Council to be supported by substantial evidence, consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses.

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP 09-11 Opening Fishing in Tributaries of Chignik Lake

Introduction: This proposal would open federal subsistence fishing for one linear mile of water in both Clark River and Home Creek upstream from their confluence with Chignik Lake, located within the state Chignik Fishery Management Area. This proposal purports to align the federal regulations with recent actions taken by the Alaska Board of Fisheries to liberalize the State subsistence fishery. However, modifications to the proposal are needed in order to align federal and state regulations as intended. The Alaska Department of Fish and Game (Department) opposes the proposal as written, but could support it with modifications outlined below.

Impact to Subsistence Users: If adopted as proposed, federally qualified subsistence users would be allowed to subsistence fish in the lower mile of Clark River and Home Creek, currently closed under federal regulations. The Federal Subsistence Board recently authorized expanded methods and means and eliminated permit and reporting requirements in the Chignik watershed. If this proposal were adopted, current federal regulations would allow federally qualified subsistence users to utilize methods and means significantly different from what is allowed under State regulations (rod and reel, bow and arrow, spear, bare-hand capture, and snagging) in Clark River and Home Creek without a federal subsistence permit. State regulations prohibit using the above-listed means for subsistence fishing. Adoption of FP09-11 would cause confusion and expose federally qualified users to State citation because there are no federal public lands in or near the area identified in this proposal. Federally qualified subsistence users using methods and means not authorized under State law would risk being cited if they are standing on State and/or private land, including state-owned submerged lands, when fishing under federal subsistence regulations in the area. (See attached land status map.) Liberal State subsistence fisheries are allowed on all lands (state, federal, and private), so adoption of this proposal is not necessary for meaningful subsistence opportunity.

Opportunity Provided by State: Salmon may be harvested under Alaska Board of Fisheries regulations using gillnets and purse seines. The State provides a subsistence preference on all lands, and liberal state subsistence fisheries for salmon are provided on the Alaska Peninsula. The subsistence fisheries in the Chignik area provide an annual household limit of 250 fish, and subsistence fishermen can be authorized to take more if they need it. Legal gear types allowed for the Chignik area subsistence fishery include gill nets and seines, except that in Chignik Lake purse seines may not be used. Additional gear types can be specified and added to the state subsistence permit (5 AAC 01.470).[1]

Each management area has specific stipulations on the respective area's subsistence permits, e.g., timing restrictions to separate subsistence and commercial fishing, gillnet length limits in areas

[1] **5 AAC 01.470. Lawful gear and gear specifications**
(a) Salmon may be taken by seines and gillnets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake salmon may not be taken with purse seines.
(b) Fish other than salmon may be taken by gear listed in 5 AAC 01.010(a) , unless restricted under the terms of a subsistence fishing permit.

open to commercial fishing, and closed waters. A commercial salmon license holder or a Commercial Fisheries Limited Entry Salmon Permit holder may subsistence fish for salmon during a commercial salmon fishing period (5 AAC 01.485) but may not subsistence fish 12 hours before or 12 hours after each commercial fishing period. If a commercial salmon license holder or a Commercial Fisheries Limited Entry Salmon Permit holder in the Chignik Management Area goes subsistence fishing in Chignik Lagoon, Lake or River, that holder is required to contact Department staff at the Chignik weir in order to separate subsistence and commercial harvests.

The Alaska Board of Fisheries established the combined amounts necessary for subsistence for communities in the Alaska Peninsula area as 34,000-56,000 salmon annually. The amounts necessary for subsistence for the Chignik Area (Chignik Bay, Central, and Eastern Districts of Chignik Management Area) is 5,900 – 14,250 salmon annually.

Conservation Issues: No salmon runs on the Alaska Peninsula are currently listed as "a stock of concern" by the Alaska Board of Fisheries. However, the recent late-run sockeye salmon returns, which primarily migrate to Chignik Lake and its tributaries, have slightly decreased over time. Both Clark River and Home Creek are the primary spawning beds for the tributary bound portion of the late-run sockeye salmon which return to the Chignik River watershed. Increases in undocumented in-tributary exploitation would not be detectable due to the lack of a federal reporting requirement. Significant increases of unreported harvest in Clark River and Home Creek may lead to conservation issues which might not be detected in a timely manner and might require severe fishery restrictions when detected.

The Federal Board recently liberalized allowable methods and means for federal subsistence fisheries and eliminated permitting and reporting requirements for federally qualified users who choose to utilize rod and reel, bow and arrow, spear, bare-hand capture, and snagging. The elimination of permitting and reporting requirements by federally qualified users causes the Department to have serious concerns about the potential for localized depletion of sockeye salmon stocks in Clark River and Home Creek if a significant increase of harvest results. Since the Federal Board does not monitor the federal subsistence fishery in this area, authorizing additional freshwater subsistence fisheries that target unmonitored wild stocks is not consistent with principles of sound management and conservation of fish and wildlife resources.

Deliberations on FP08-11 at the December 2007 Federal Board meeting included specific discussions by three Federal Board members who were in support of adopting the proposal because the expected increase in harvest was estimated to be reasonably small and the proponent's intent was to harvest one or two fish at a time (Federal Board Transcripts, December 20, 2007, pages 228 and 229). Further discussion by the Federal Board and Regional Advisory Council chairs also focused on liberalizing Federal subsistence users' methods and means to allow for harvests of individual salmon for immediate sustenance while traveling light in the course of camping, picking berries, or hunting. Discussions at the Federal Board meeting did not consider the impacts adoption of FP08-11 would have on the sockeye salmon stocks within Clark River and Home Creek, because both were closed to federal subsistence fishing at the time of the Board meeting. Cumulative unreported harvest from creeks that are near communities and easily accessible was also not considered by the Federal Board at the December 2007 meeting when the

methods and means were liberalized to allow snagging, bare-hand capture and similar means for light travelers within the federal subsistence fisheries on the Alaska Peninsula.

At the December 2007 meeting, the Federal Board approved FP08-11, which liberalized methods and means and eliminated reporting requirements while using those methods and means, based on information suggesting the level of harvest would be a small number of individually harvested fish by subsistence users traveling light in the field. During 2008, the Department received reports of federal subsistence users harvesting their winter supply of salmon from these tributaries of concern by federal methods and means without permits and harvest reporting. As stated in objections to FP08-11, the Department has serious conservation concerns with unreported harvests and the methods and means which were allowed. Those concerns have increased with FP09-11 and the recent disclosure of significant federal subsistence harvests in Home Creek and Clark River.

Jurisdiction Issues: In order for rural residents and enforcement personnel to know where they can legally participate in federal subsistence fisheries, the Department requests detailed land status maps showing areas and specific boundaries of waters claimed to be within federal subsistence jurisdiction and the basis for those claims. Maps provided by federal staff to date are not accurate enough to ensure federal subsistence users do not inadvertently fish from lands not under federal jurisdiction. Significant portions of federal lands surrounding the area are bordered by state or private lands, where there is either no federal jurisdiction or federally qualified subsistence fishers cannot participate in federal subsistence fisheries while standing on non-federal lands. During the December 2007 Federal Board meeting, State of Alaska Wildlife Trooper testimony (Federal Board Transcripts December 11, 2007 pages 89-91) illustrated the importance of users understanding and knowing jurisdiction and land status. This testimony explained that when an enforcement officer encounters an individual conducting an activity that is prohibited by State regulations while on State or private lands, including State owned submerged lands, the person may be cited.

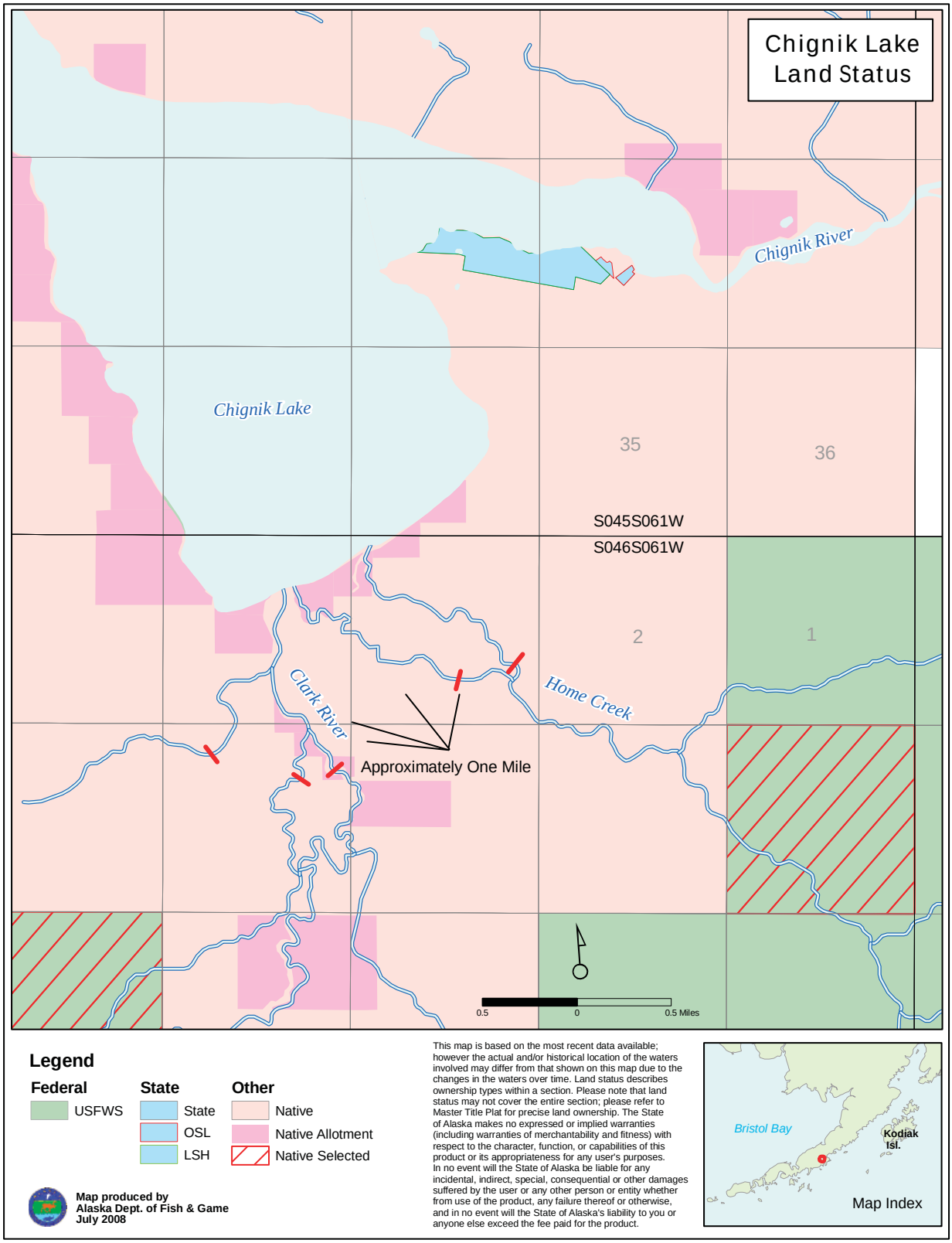
Other Issues: During the Bristol Bay Regional Advisory Council meeting, the Council recommended modifying the proposed regulation language from "*…those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream* ***one linear*** *mile"* to *"…those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream* ***one mile.****"* The description change of "one linear mile" to "one mile" was recommended by the Regional Advisory Council to match the existing State regulation description of "one mile" in order to reduce confusion. The Department agrees that the description of "one mile" should match the State regulatory language. However, changing the regulation to also match the gear type allowed by State regulations would address confusion, reporting, and potential conservation issues. The Department recommends the following regulatory language:

Chignik Area — Salmon

§___.27(i)(8)(ii) Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes, ***except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile.***

§___.27(i)(8)(iv) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, you may not use purse seines and in the waters of ***Clark River and Home Creek from their confluence with Chignik Lake upstream one mile you may only use gillnets. In all other waters, y****ou may also take salmon* ~~*without a permit*~~ ***with a subsistence permi****t by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.*

Recommendation: Oppose. The Federal Board is urged to modify the proposal so that federal subsistence users are authorized to use only the same methods and means in the Clark River and Home Creek waterways as are authorized in state regulations. Adopting a modified version of the proposal which would allow federally qualified subsistence users to fish in the lower mile of Clark River and Home Creek with gill nets would mirror State subsistence fishery regulations. Federally qualified users who participate in the federal subsistence fishery while using a gill net would be required to obtain a permit and report harvests. The Department would support the above proposed modified regulation which ensures same gear type usage and annual reporting of harvests to allow continuation of sound management of the fisheries.


Chignik Lake
Land Status
Chignik River
Chignik Lake
35
36
S045S061W
S046S061W
2
1
Clark River
Home Creek
Approximately One Mile
0.5
0
0.5 Miles
Legend
Federal
USFWS
State
State
OSL
LSH
Other
Native
Native Allotment
Native Selected
Map produced by
Alaska Dept. of Fish & Game
July 2008
This map is based on the most recent data available; however the actual and/or historical location of the waters involved may differ from that shown on this map due to the changes in the waters over time. Land status describes ownership types within a section. Please note that land status may not cover the entire section; please refer to Master Title Plat for precise land ownership. The State of Alaska makes no expressed or implied warranties (including warranties of merchantability and fitness) with respect to the character, function, or capabilities of this product or its appropriateness for any user's purposes. In no event will the State of Alaska be liable for any incidental, indirect, special, consequential or other damages suffered by the user or any other person or entity whether from use of the product, any failure thereof or otherwise, and in no event will the State of Alaska's liability to you or anyone else exceed the fee paid for the product.
Bristol Bay
Kodiak Isl.
Map Index

FP09-14 Executive Summary	
General Description	Proposal FP09-14 requests that Federal public waters in the Unalakleet River be closed to Chinook salmon fishing except by Federally qualified subsistence users. *Submitted by Kathy Johnson, Native Village of Unalakleet.*
Proposed Regulation	Norton Sound — Port Clarence Area *§___.27(i)(2)(ii) In the Norton Sound District, you may take fish at any time except as follows* *(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday;* ***(1) Federal public waters of the Unalakleet River, upstream from the mouth of the Chirosky River are closed to the taking of Chinook salmon from June 15 to July 5, except by Federally qualified subsistence users.***
Seward Peninsula Regional Council Recommendation	**Support** Proposal FP09-14 **with modification.** The modified regulation should read: Norton Sound — Port Clarence Area *§___.27(i)(2)(ii) In the Norton Sound District, you may take fish at any time except as follows* *(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday;* ***(1) Federal public waters of the Unalakleet River, upstream from the mouth of the Chirosky River, are closed to the taking of Chinook salmon from July 1 to July 31, by all users. This closure may be relaxed by the inseason manager if run strength warrants.***
Interagency Staff Committee Comments	See comments following the analysis.
ADF&G Comments	**Oppose**
Written Public Comments	**None**

REGIONAL ADVISORY COUNCIL RECOMMENDATION
FP09-14

SEWARD PENINSULA REGIONAL ADVISORY COUNCIL

Support Proposal FP09-14 **with modification** to close the Federal public waters of the Unalakleet River upstream from the mouth of the Chirosky River to the taking of Chinook salmon from July 1–July 31 to all users. The recommended July closure can be amended by the inseason manager if the run strength warrants it.

The modified regulation should read:

Norton Sound — Port Clarence Area

§___.27(i)(2)(ii) In the Norton Sound District, you may take fish at any time except as follows (B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday;

(1) Federal public waters of the Unalakleet River, upstream from the mouth of the Chirosky River, are closed to the taking of Chinook salmon from July 1 to July 31, by all users. This closure may be relaxed by the inseason manager if run strength warrants.

Unalakleet people understand this issue and the status of the resource. We need to reduce restrictions on subsistence users and make management of the fishery easier to understand. Local users are not able to get the fish they need for subsistence. Focus must be on conservation of the resource to bring the fishery back; there is potential for the fishery in this area to expand. We all need to do our best to bring this fishery back. This modification was supported by the Native Village of Unalakleet.

STAFF ANALYSIS
FP09-14

ISSUES

Proposal FP09-14, submitted by Kathy Johnson, Native Village of Unalakleet, requests that Federal public waters in the Unalakleet River be closed to Chinook salmon fishing except by Federally qualified subsistence users.

DISCUSSION

The proponent states that Chinook salmon in the Unalakleet River were identified by the State of Alaska as a stock of concern in 2000. The proponent submitted this proposal as a conservation measure to provide Chinook salmon additional protection from harvest while traveling to their spawning grounds. The proponent states that closure of Federal public waters would increase Chinook salmon returns in the future by allowing more Chinook salmon to spawn. In a recent phone conversation, the proponent expressed interest in supporting a modification of the proposal (Ivanoff 2008, pers. comm.). Upon further analysis of the North River Tower data, the proponent felt extending the closure to include Federally qualified subsistence users would be more effective in conserving Chinook salmon. In addition, the proponent suggested extending the closure through July 31 to ensure the majority of Chinook salmon reach the spawning grounds.

Existing Federal Regulation

Norton Sound — Port Clarence Area

§___.27(i)(2)(ii) In the Norton Sound District, you may take fish at any time except as follows:

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday.

Proposed Federal Regulation

Norton Sound — Port Clarence Area

§___.27(i)(2)(ii) In the Norton Sound District, you may take fish at any time except as follows

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday;

(1) Federal public waters of the Unalakleet River, upstream from the mouth of the Chirosky River, are closed to the taking of Chinook salmon from June 15 to July 5, except by Federally qualified subsistence users.

Existing State Regulation

5 AAC 70.011(c) Season and bag, possession, and size limits for the Northwestern Management Area

(9) in the Unalakleet River drainage,

(A) the bag and possession limit for king salmon is two fish, of which only one fish may be 20 inches or greater in length;

(B) the annual limit for king salmon 20 inches or greater in length is two fish; an angler fishing for king salmon must possess and complete a current year's nontransferable harvest record as described in 5 AAC 70.024(b);

(C) the bag and possession limit for salmon, other than king salmon, is 10 fish, of which only four fish, in combination, may be coho, chum, and sockeye salmon;

(D) a salmon removed from the water must be retained and becomes part of the bag limit of the person originally hooking it; a person may not remove a salmon from the water before releasing it;

Extent of Federal Public Waters

For purposes of this discussion, the phrase "Federal public waters" is defined as those waters described under 50 CFR 100.3. Federal public waters for the Unalakleet River drainage include the upper 81 river miles of the Unalakleet River (106 river miles in total length) (**Map 1**). This portion of the river is designated a National Wild River and is administered by the Bureau of Land Management.

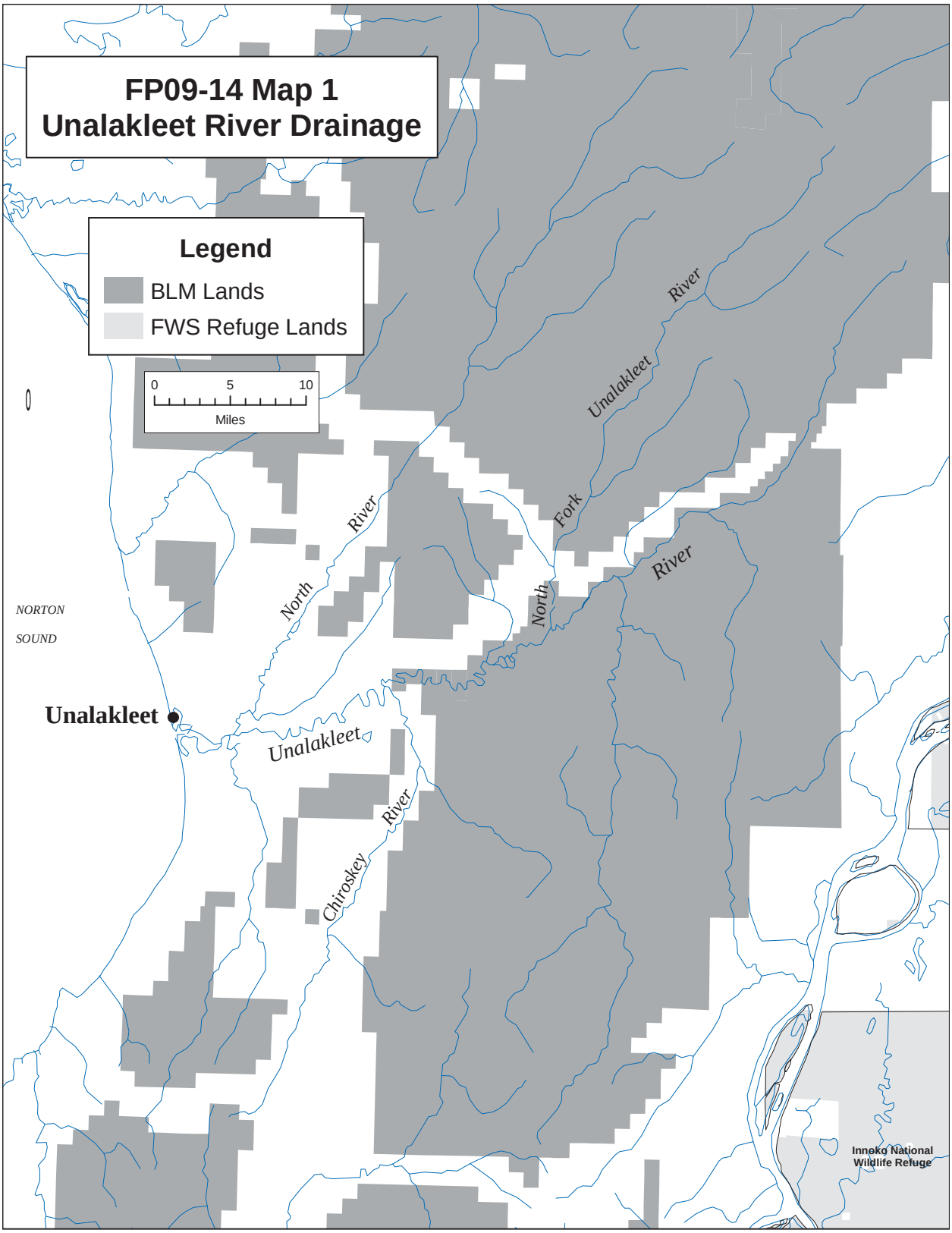
Customary and Traditional Use Determinations

All residents of Norton Sound-Port Clarence Area have a positive customary and traditional use determination for salmon in the Unalakleet River.

Regulatory History

The Unalakleet and Shaktoolik Subdistricts are managed as one fishery by the Alaska Department of Fish and Game (ADF&G) because past studies have shown that salmon bound for these subdistricts intermingle (Menard 2007a). Chinook salmon populations returning to this area are of special biological concern. Beginning in 2004, the Alaska Board of Fisheries identified Chinook salmon in the Unalakleet and Shaktoolik subdistricts as stocks of yield concern. In February 2007, the Alaska Board of Fisheries reconfirmed the identification of Unalakleet and Shaktoolik Chinook salmon as stocks of yield concern (Menard 2007a). A "yield concern" is "*a concern arising from a chronic inability, despite the use of specific management measures, to maintain expected yields, or harvestable surpluses, above a stocks escapement needs;...*" (5 AAC 39.222). The Alaska Board of Fisheries took further action at its February 2007 meeting to increase escapement by adopting a more conservative Chinook salmon management plan (5AAC 04.395). Under the new management plan, a subsistence fishing schedule was placed into regulation, as well as reductions in the sport fishing daily bag and annual possession limits. Additionally, commercial fishing directed at Chinook salmon can only occur if ADF&G projects the midpoint of the North River tower sustainable escapement goal (SEG[1]) range will be achieved. The plan directs ADF&G to provide escapement windows by restricting subsistence gillnet fishing for salmon from mid-June to mid-July to two 48-hour fishing periods a week in marine waters, and two 36-hour fishing periods a week

[1]ADF&G establishes sustainable escapement goals based on historical performance and other factors known to conserve stocks over a 5- to 10-year period. They are used in situations where a biological escapement goal cannot be estimated due to the absence of a stock-specific catch estimate.


FP09-14 Map 1
Unalakleet River Drainage
Legend
BLM Lands
FWS Refuge Lands
0
5
10
Miles
Unalakleet River
North Fork
North River
NORTON SOUND
Unalakleet
Unalakleet River
Chiroskey River
Innoko National Wildlife Refuge

in the Unalakleet River. Subsistence fishing time can only be increased if ADF&G projects the lower end of the SEG (1,200) will be achieved.

Diminishing Chinook salmon returns have resulted in restrictions of the State's commercial, subsistence and sport fisheries by Emergency Order authority. A Chinook directed commercial fishery has not occurred since 2005 (Menard 2008). In an effort to protect weak Chinook salmon returns ADF&G closed both the marine waters of the Unalakleet and Shaktoolik subdistricts and the waters of the Unalakleet River to subsistence salmon fishing in July 2006, July 2007 and July 2008 (Menard and Kent 2006; Menard 2007b; Menard and Kent 2008). These closures were followed by restrictions in the sport fishery (Taube 2006; Scanlon 2007 and 2008a). In 2006 through 2008 ADF&G prohibited the retention of sport-caught Chinook salmon in all waters of the Unalakleet and Shaktoolik River drainages and prohibited the use of bait while sport fishing in both rivers. In addition, Federal public waters of the Unalakleet River were closed to the taking of Chinook salmon through Special Action authority in 2006 through 2008. Beach seines were implemented as the only legal means of harvesting salmon, allowing captured Chinook salmon to be released (Helfrich 2006, 2007 and 2008)

Biological Background and Harvest History

The Unalakleet River and its tributaries support a Chinook salmon run that sustains the largest subsistence, commercial and sport harvests in Norton Sound. Assessment of Chinook salmon escapement has been successfully conducted 1984–1986 and 1996 to the present using a counting tower on the North River, a tributary of the Unalakleet River. Radio telemetry work conducted by ADF&G showed that approximately 40% of Chinook salmon entering the drainage migrated up the North River and the remaining 60% migrated up the Unalakleet River (**Figure 1**) (Wuttig 1998 and 1999).

Chinook salmon returns to the drainage have been poor since 2000. The North River tower SEG range for the North River is 1,220 to 2,600 Chinook salmon (Soong et al. 2008). Prior to 2007 the lower end of the North River tower SEG had not been achieved since 2003. In 2008, the North River tower escapement was estimated at 903, once again falling short of the SEG (Kent 2008, pers. comm.). Low returns have resulted in closures of directed commercial fishing on Chinook salmon since 2005. The most recent 5-year average (2003–2007) commercial harvest was 25 Chinook salmon taken during the chum salmon fishery (**Table 1**). Chinook salmon escapements into the North and Unalakleet Rivers have not increased in response to commercial fishing closures and the increasingly restrictive subsistence fishing. Subsistence harvest estimates are collected by post-season surveys and for the Unalakleet Subdistrict are reported as total fish harvested. The majority of the Chinook salmon subsistence harvest under State jurisdiction occurs in marine waters at the mouth of the Unalakleet River (**Figure 2**). Chinook salmon subsistence harvests have decreased over time. The most recent 5-year average (2003–2007) harvest of 2,264 Chinook salmon was much less than the prior 5-year average (1998–2002) harvest of 4,002 Chinook salmon. Even with the declining subsistence harvests, subsistence fishery exploitation rates have increased in recent years due to the decreased size of the Chinook salmon run (**Figure 3**).

The Unalakleet River supports the largest sport fishery in Norton Sound (ADF&G 2008). From 2003 to 2007, an average of 763 anglers per year fished in the Unalakleet River (**Table 2**). These anglers fished an average of 4,124 angler days targeting Chinook salmon, coho salmon, chum salmon, pink salmon, Dolly Varden and Arctic grayling. Coho salmon and Dolly Varden were the most commonly sport-harvested species, and the most recent 5-year (2003–2007) average harvests were 3,687 coho salmon and 1,263 Dolly Varden. Chinook salmon comprise a smaller portion of the overall sport harvest. The most recent 5-year (2003–2007) average harvest was 242 Chinook salmon, which is less than the previous 5-year average (1998–2002) harvest of 403 Chinook salmon. Most Chinook salmon harvested

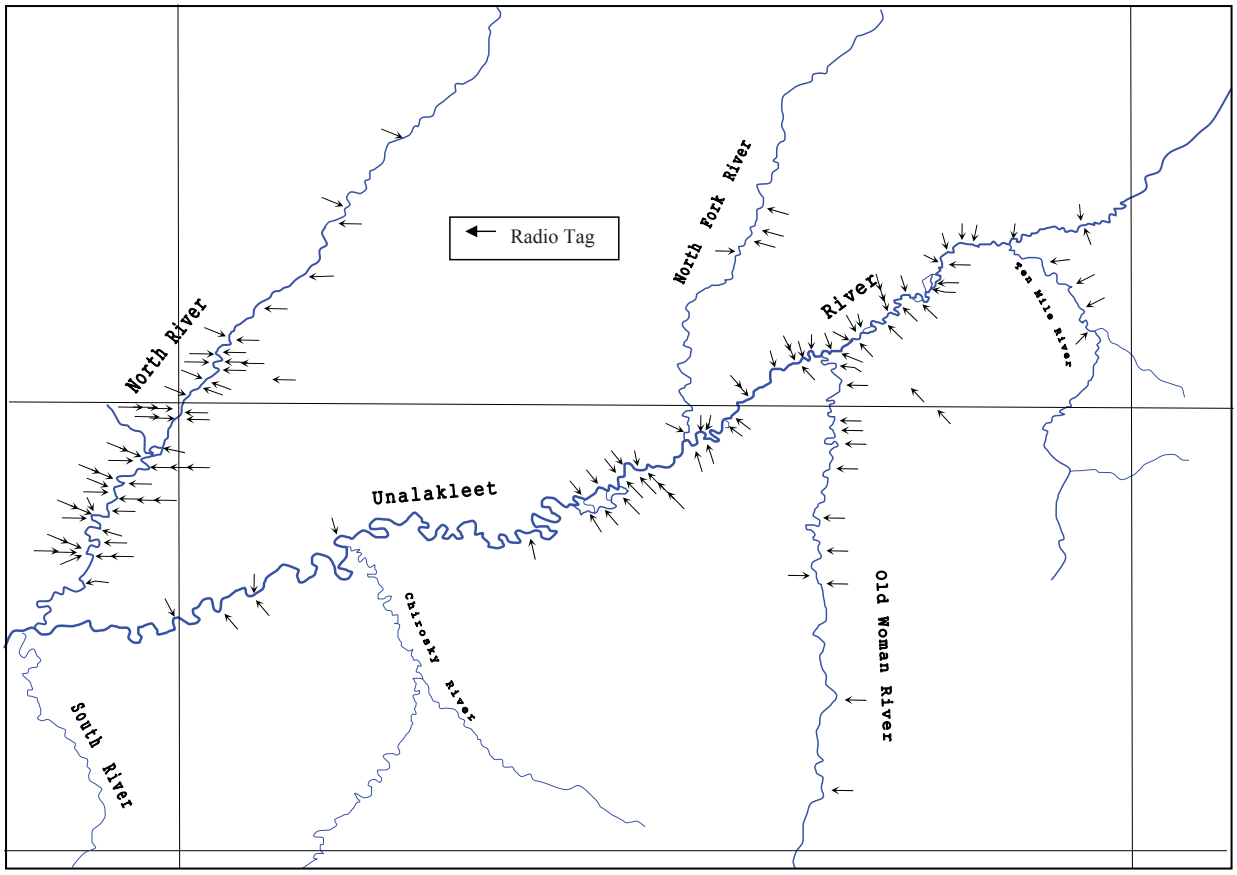


Figure 1. Location of radio-tagged Chinook salmon in the Unalakleet River Drainage, 1998 (modified from Wuttig 1999).

Table 1. Annual harvest and escapement of Chinook salmon for the Unalakleet River, 1998-2007 (Soong et al. 2008; Kent and Bergstrom 2006).

	Harvest (number of salmon)			Escapement (number of salmon)	
Year	Sport	Commercial	Subsistence	North River	Unalakleet River
1998	513	6,413	5,915	2,100	5,440
1999	415	1,927	4,504	2,263	6,860
2000	345	582	2,887	1,046	2,710
2001	250	116	3,662	1,337	4,640
2002	544	4	3,044	1,505	3,899
2003	97	10	2,585	1,452	3,762
2004	356	0	2,801	1,125	2,915
2005	216	101	2,115	1,015	2,630
2006	394	11	2,155	906	2,347
2007	147	5	1,665	1,950	5,047
5-year average:					
1998-2002	413	1,808	4,002	1,650	4,710
2003-2007	242	25	2,264	1,290	3,340

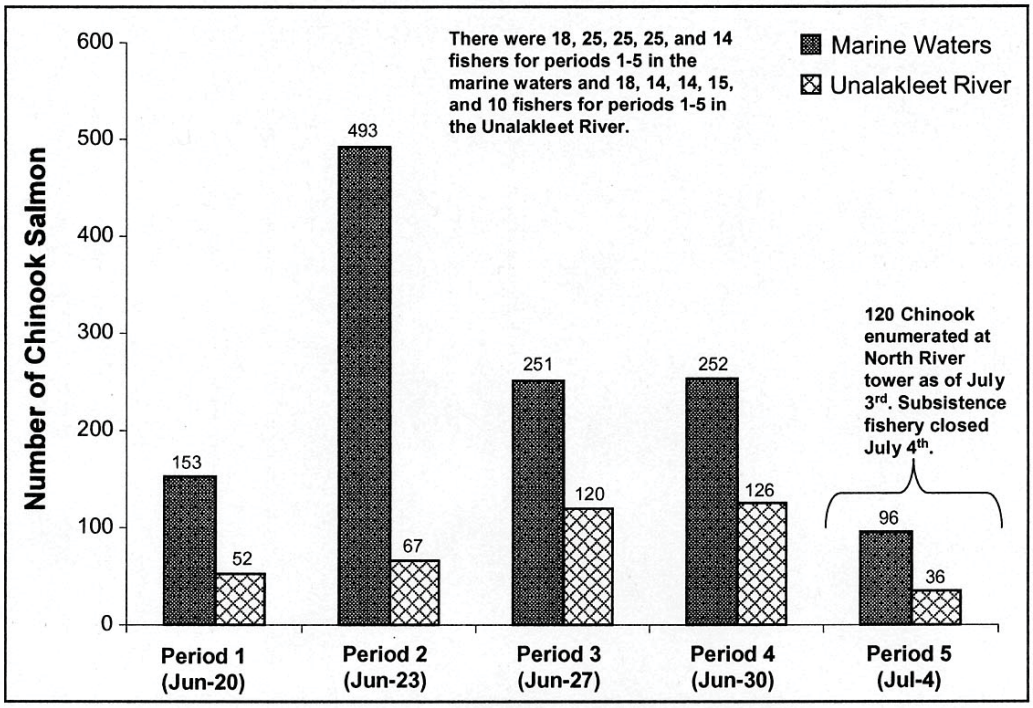
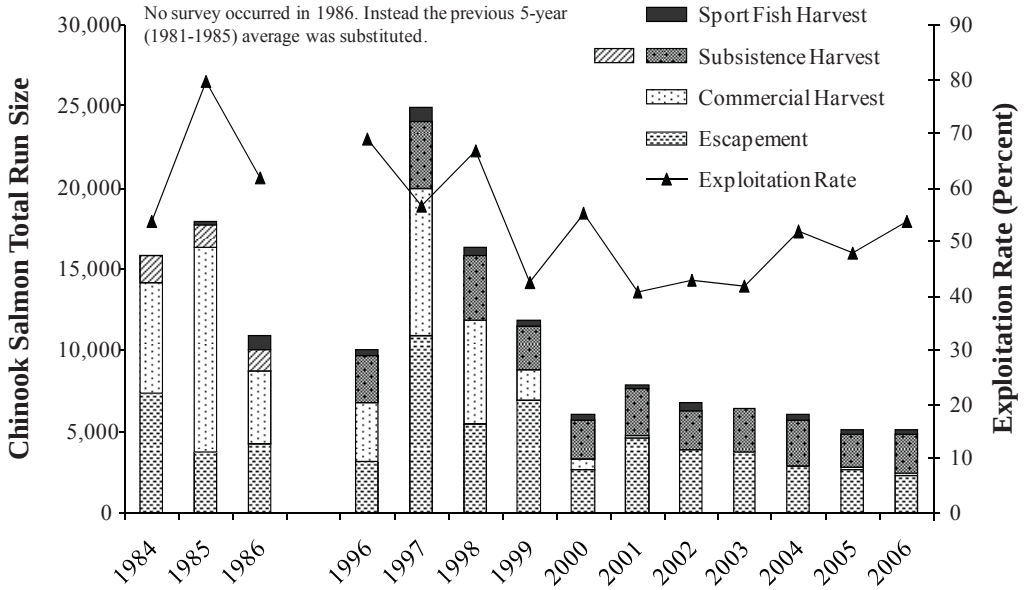


Figure 2. Reported in season Chinook salmon subsistence harvest by period, Native Village of Unalakleet, 2007 (Menard 2007a).



Note: Change in shade pattern from 1996 to 2006 represents when household subsistence survey data were expanded to include those households not surveyed. Total run sizes prior to 1996 were most likely greater.

Figure 3. Estimated total run size (harvest and escapement) and total exploitation rate (summed commercial, subsistence, and sport harvests) for Chinook salmon in the Unalakleet River, 1984-1986 and 1996-2006. Lack of escapement data for years prior to 1984 and for 1987-1995 precludes calculation of total run size and exploitation rates for those years (Kent and Bergstrom 2006).

Table 2. Annual sport fishing effort and harvest by species for the Unalakleet River, 1998-2008 (ADF&G 2008).

	Effort		Harvest (number of fish)					
Year	Number of Anglers	Number of Days Fished	Chinook Salmon	Coho Salmon	Pink Salmon	Chum Salmon	Dolly Varden	Arctic Grayling
1998	679	3,558	478	2,613	434	432	521	119
1999	796	3,606	415	2,030	2,946	211	2,241	256
2000	912	5,741	340	3,914	939	398	4,440	524
2001	803	2,526	239	2,426	188	714	916	212
2002	1,093	8,195	544	2,937	1,378	607	789	773
2003	509	3,056	97	1,604	29	191	134	131
2004	741	4,527	356	3,524	2,003	47	3,593	597
2005	747	4,768	216	3,959	473	36	500	32
2006	818	4,062	394	5,230	891	224	1,358	60
2007	999	4,205	147	4,117	618	85	731	10
5-year average:								
1998-2002	857	4,725	403	2,784	1,177	472	1,781	377
2003-2007	763	4,124	242	3,687	803	117	1,263	166

by sport fishing in the Unalakleet River are probably taken near the mouth of the North River, which is under State jurisdiction (Scanlon 2008b. pers. comm.). The Bureau of Land Management (BLM) regulates commercially guided sport fishing in Federal public waters (upriver from the confluence of Tenmile Creek) through the issuance of Special Recreation Permits, but no permits have ever been issued (Kowalczyk 2008, pers. comm.). Use of the upper river by nonguided sport fishers is hard to determine. Reports are mixed (Kowalczyk 2008 pers. comm.; Ivanoff 2008, pers. comm.) but it is thought that little to no sport caught Chinook salmon are harvested in Federal public water.

During their fall meeting the Seward Peninsula Regional Advisory Council (Council) was presented with the most currently available data. Based on the diminishing Chinook salmon returns; and public input, the Council chose to support this proposal with modification. The modification changed the closure from July 1 through July 31 and included all users. It also allowed the closure to be relaxed by the inseason manager if there are adequate return in a particular year.

Effects of the Proposal

The Federal Subsistence Board (Board) is authorized to close Federal public lands and waters to the nonsubsistence taking of fish and wildlife to ensure conservation of healthy populations and to ensure subsistence uses are given a priority over the taking for other purposes. ANILCA mandates in Section 815: *"Nothing in this title shall be construed as ….authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife,… to continue subsistence uses of such populations…".* However, closure of the upper Unalakleet River waters under Federal jurisdiction to all users, even if extended to July 31 as recently suggested by the Council, would have little effect on Chinook salmon populations since there is no subsistence fishing in these waters and use by sport fishers is thought to be little to none. The requested action only has meaning if it is done in concert with an action in State jurisdiction. If fishing pressure increases in the future, the National Park Service has inseason Federal management authority to restrict or close fishing using their Special Action authority. Special Actions provide a timely and responsive method for managing the fishery.

Currently, Chinook salmon are harvested almost entirely in the lower Unalakleet River by State subsistence and sport users, so restrictions and closures made by State managers to lower river fisheries have the greatest conservation effect on the Chinook salmon run.

OSM CONCLUSION

Oppose Proposal FP09-14.

Justification

Unalakleet River Chinook salmon runs have been below expectations since 2000. The North River tower SEG was achieved in 2007 mainly due to closures in the State commercial, subsistence and sport fisheries, although corresponding closures were made in the Federal subsistence fishery. Prior to 2007 the lower end of the SEG had not been achieved since 2003. Due to poor run performance, the State has not allowed a commercial fishery for Chinook salmon since 2005. Due to declining Chinook salmon runs, the subsistence harvest of this species has also declined. The most recent 5-year average (2002–2006) harvest of 2,540 Chinook salmon was only about half of the previous 5-year average (1997–2001) harvest of 4,770 Chinook salmon. Due to declining runs, the Alaska Board of Fisheries designated Chinook salmon in the Unalakleet and Shaktoolik subdistricts as stocks of yield concern in 2004 and again in 2007. The Alaska Board of Fisheries also took action to increase escapement by adopting a conservative Chinook salmon management plan (5AAC 04.395).

Subsistence fishing in the Unalakleet River occurs entirely in the lower portion of the river, which is outside of Federal jurisdiction. Although ANILCA authorizes closure of Federal public waters if necessary to continue subsistence uses, a closure of the upper Unalakleet River to Chinook salmon fishing to all users except Federally qualified subsistence users would probably not provide additional subsistence opportunity. Also, since no Chinook salmon harvest by other users in Federal public waters has been documented, such a closure would provide no additional protection to Chinook salmon spawning populations. Closures or restrictions in State managed commercial, subsistence and sport fisheries in the lower Unalakleet River are the most effective way to reduce exploitation and allow more Chinook salmon to spawn.

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INTERAGENCY STAFF COMMITTEE COMMENTS
FP09-14

The Interagency Staff Committee (ISC) found the staff analysis for Proposal FP09-14 to be a thorough evaluation of the proposal. However, rather than adopting the OSM conclusion, some ISC members suggest that the Board could adopt the Regional Advisory Council's (Council) recommendation for closure based in the same information. The closure would be consistent with ANILCA 815(3) and 816(b) since there is clearly a conservation concern as evidenced by State and/or Federal fisheries managers restricting or closing subsistence, sport and/or commercial fishing repeatedly year after year.

The in-season manager currently has the authority to close Federal public waters during the season and has been doing so through special action authority delegated by the Board and in coordination with the Alaska Department of Fish and Game. Instituting a closure in Federal regulation would alleviate the in-season manager from having to continue issuing special actions each year and also would inform the public that Federal waters are closed to fishing for Chinook salmon unless run strength improves enough to warrant opening by special action. Sound fishery management principles suggest that when virtually the same in-season action is taken repeatedly year after year, a regulatory action may be warranted.

The Council is sufficiently concerned about the status of the Unalakleet River Chinook salmon that it recommends modifying the proposal to restrict subsistence users as well as non-subsistence users. The Council acknowledged that a decision by the Federal Subsistence Board to close Federal waters to both subsistence and non-subsistence fishing may result in conservation of only a small number of Chinook salmon because of the limited amount of fishing that occurs in these waters. Nonetheless, because of the continuing depressed nature of the run, any Chinook salmon conserved is of importance to restore the run to previous sustainable levels.

The ISC discussed the Council's recommendation to further modify the proposal to allow the (Federal) in-season manager to "relax the closure" if run strength warrants. If the Board were to adopt the Council's recommendation, the ISC suggests that the Board clarify the Council's wording associated with the in-season manager's authority to relax the closure. That new wording could be: "The in-season manager is authorized to open the closed area to Federally-qualified users or to all users when run strength warrants."

New information since the Council meeting is that the local Southern Norton Sound State Fish and Game Advisory Committee supports the Council's recommendation.

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-14 Unalakleet Chinook Salmon Closure

Introduction: This proposal would close all fishing for Chinook salmon in the Unalakleet River within federal public lands from June 15–July 5, except by federally-qualified subsistence users. The area of proposed closure is the waters upstream of the confluence of Chirosky River, located approximately 20 miles east of Unalakleet. This proposal was submitted with the stated intent of protecting spawning phase Chinook salmon that are migrating through the area. However, the majority of Chinook salmon is not likely to reach the spawning grounds by July 5.

Impact on Subsistence Users: If adopted, the proposal would prohibit taking of Chinook salmon for subsistence purposes by Alaska residents and sport fishermen but not by federally-qualified subsistence users. The closure would provide little benefit to federally-qualified subsistence users because few, if any, Chinook salmon are harvested that far upstream in the Unalakleet watershed. Chinook salmon are primarily harvested closer to the village of Unalakleet or in marine waters. Few non-federally qualified users target Chinook salmon in federal public lands where the fish are more watermarked than the brighter fish closer to the Unalakleet River mouth. In addition, travel upriver to fish on federal public lands is increasingly cost-prohibitive due to high fuel costs.

Opportunity Provided by State: Subsistence salmon fishing occurs in freshwaters of the Unalakleet River and surrounding marine waters of the Unalakleet Subdistrict. All Alaska residents can subsistence fish with gillnets in both fresh and marine waters under State of Alaska (State) regulations. Beach seines can only be used by emergency order, and all Chinook salmon must be released by regulation. The State subsistence Chinook salmon fishery in the Unalakleet watershed is normally open all year and is required by regulation beginning June 1 to use only set gillnets until July 15. From June 15 through July 15, subsistence fishing is normally allowed twice a week for 36-hour fishing periods. Commercial fishery targeting Chinook salmon is not allowed unless the midpoint of the escapement goal is projected to be met, as described in the Unalakleet River King Salmon Management Plan. The Unalakleet River salmon sport fishery is normally open all year, and the daily bag and possession limit is 2 fish, only one 20” or longer. There is an annual limit of 2 Chinook salmon 20” or longer.

Conservation Issues: The Unalakleet River Chinook salmon stock was designated as a stock of yield concern by the Alaska Board of Fisheries in 2004. This designation was due to the inability to maintain near average yields despite use of management measures to provide harvestable surpluses above the stock escapement needs during the previous 5-year period. Since 2002, the Chinook salmon commercial fishery has been closed, except for two 24-hour fishing periods in 2005. Since 2003, subsistence and sport fisheries targeting Unalakleet watershed Chinook salmon have been significantly restricted or closed to allow for escapement. Under the State *Policy for the Management of Sustainable Salmon Fisheries*, if the Unalakleet River Chinook salmon stock chronically fails to meet its escapement goal, Alaska Department of Fish and Game would recommend changing the stock of concern status from a yield concern to a management concern until the stock recovers.

Annual commercial fishery harvests of Chinook salmon in the Unalakleet Subdistrict have dropped from a long term annual average of 5,717 fish (1980-2000) to a recent average of 32 fish (2001-2007). The annual State subsistence fishery harvests of Chinook salmon in the Unalakleet Subdistrict during the last 14 years have ranged from 6,325 fish in 1997 to 1,665 fish in 2007 with a decreasing trend in recent years.[1] The sport fish harvest from 2001-2007 has averaged 286 Chinook salmon and ranged from 97 to 544 fish annually. A trend of harvest transfer from commercial fisheries to subsistence fisheries has developed due to the severe restrictions or closure of commercial fisheries in recent years in response to smaller returns of Chinook salmon to the Unalakleet River.

Under the conservative management plan adopted by the Alaska Board of Fisheries in February 2007, the State subsistence fishery has been restricted in-river by reducing the fishery time periods to two 36-hour fishing periods per week during the open season in fresh water and two 48-hour fishing periods per week in the marine fishery. When escapement goals still are not projected to be met inseason, subsistence fishing has been further restricted or closed. When lower escapement goals are projected to be met inseason, the State subsistence fishery may be liberalized. The sport fishery has been closed by emergency order in early July to retention of Chinook salmon in 2003, 2004, 2006, 2007, and 2008 due to conservation concerns. Management actions taken in State-managed subsistence and sport fisheries to conserve Chinook salmon include federal public lands upriver. Because of migratory timing, these actions are taken prior to any fishing effort occurring in those waters.

Jurisdiction Issues: The majority, if not all, of subsistence and sport Chinook salmon harvest in the Unalakleet River watershed and nearby marine waters occurs within marine and freshwaters not subject to federal regulations. The lands and waters from the mouth of the Unalakleet River to river mile 22 are State, corporation, or other non-federal property. The area addressed in the proposal is within State waters in the lower extent of the Unalakleet Wild and Scenic River area. Detailed maps are needed, showing boundaries and areas where federal regulations are claimed to apply and justification for claiming those boundaries.

While standing on state and private lands (including state-owned submerged lands), persons must comply with State law and cannot harvest under conflicting federal regulations. If this proposal is adopted, enforcement difficulties and user confusion -- concerning where and how federal regulations that are different than State regulations apply -- will result unless detailed maps and explanations specific to the area are provided.

Recommendation: Oppose. Adoption of this proposal will not improve the health of the Unalakleet River Chinook salmon stock and will not improve opportunity for subsistence use. In years of low returns, State closures or restrictions are in place before Chinook reach the waters subject to federal jurisdictional claims. The proposed closure does not meet the requirements of the Federal Subsistence Board's Closure Policy adopted August 2007.

[1] Prior to 1994, subsistence users were not surveyed each year.